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THE STAIR ANNALS

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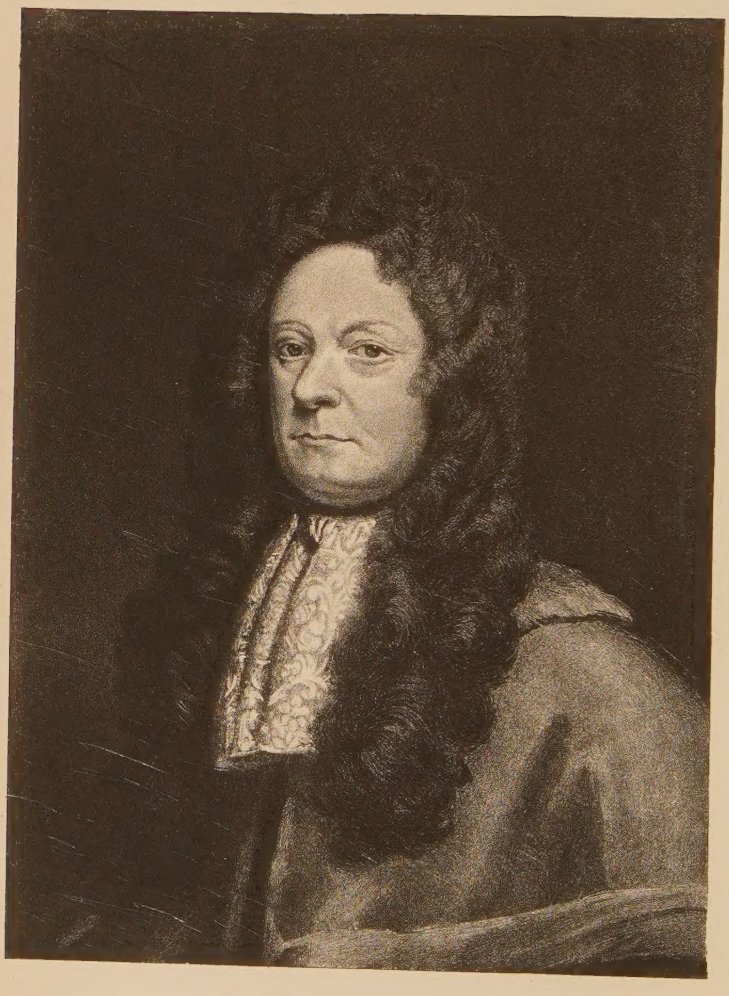

JAMES DALRYMPLE

FIRST VISCOUNT STAIR.

ANNALS

AND

CORRESPONDENCE

OF THE

VISCOUNT

AND THE

FIRST AND SECOND

EARLS OF STAIR

BY

JOHN MURRAY GRAHAM

IN TWO VOLUMES

VOL. I.

WILLIAM BLACKWOOD AND SONS
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PREFACE.

I HAVE been induced to engage in this biographical work principally by the historical and personal interest attaching to its subject. The first Viscount Stair and the first and second Earls of Stair were, in their respective walks, three of the most distinguished men of their time. The narrative of their lives connects with the history of Great Britain during an unbroken period of one hundred years, illustrating that history in various particulars, and clearing up, if not supplying, some of the links in the continuous chain of events.

Several valuable collections of hitherto unpublished Letters and Papers have, by the courtesy of their possessors, been placed at my disposal for this undertaking. These are—(1.) The 'Stair Papers,' in 28 volumes folio, in possession of the present Earl of Stair at Oxenfoord Castle, relating chiefly to the second Earl, and including the period of his celebrated embassy at Paris; (2.) A series of letters belonging to

the Marquis of Lothian, from the first Earl of Stair, when Secretary of State for Scotland, to Robert, fourth Earl and first Marquis of Lothian, Royal Commissioner to the second Assembly of the Scottish Kirk after its establishment in the reign of William and Mary; (3.) Letters from the first Lord Stair to Lord Arniston, and other letters in 1663 and 1664, in possession of Mr Dundas of Arniston; (4.) Letters of the first Lord Stair to the Duke of Lauderdale and others during the reign of Charles II., acquired by Mr David Laing, of the Signet Library, Edinburgh, from the late Mr Dawson Turner's collection of 'Lauderdale Papers;' (5.) Letters from the second Earl of Stair, when campaigning with the Duke of Marlborough, to John, Earl of Mar, then Secretary of State for Scotland, copied from the originals in the Mar charter-chest for the present Earl of Stair, under the supervision of Mr William Fraser, Edinburgh; (6.) a State-paper or Letter of the first Earl of Stair addressed to the Lord Treasurer Godolphin in 1703, as to Scottish affairs in view of a treaty of Union, and a letter from Lord Godolphin on the same subject to the Chancellor of Scotland, both acquired at the sale of the family papers of the Duke of Leeds by Mr John Webster, Aberdeen.

In the biography of the first Lord Stair, lawyer and statesman, a man of a career so varied as to have been successively upon confidential terms with General Monck, the Duke of Lauderdale, and King William III., I have confined myself strictly to a narra-

tive of his life, interwoven as that was with the history of the country. The life of Lord Stair, who was for many years President of the Court of Session in Scotland, having been written not long since in a somewhat elaborate form by Mr Æneas J. Mackay of the Scottish bar, I have made this biography shorter than I otherwise might have done, at the same time introducing what novelty I could into the narrative, interspersing a number of hitherto unprinted letters, and avoiding all irrelevant matter.

The life of his son, the first Earl of Stair, has never, so far as I am aware, been written, though in connection with the massacre of Glenco his actings have been narrowly scrutinised and largely commented on. Versatile in politics in the early portion of his singular career, he settled down after the Revolution into the confidential Scottish Minister of King William, doing battle in the northern parliament with every one, Jacobite or Presbyterian, who had not the word of the Government, and taking a prominent part in the ecclesiastical proceedings which resulted in the establishment of Presbytery. His later time was chiefly distinguished by the consummate ability and powerful exertions he brought to bear on the settlement of the Treaty of Union, and the passing of the Act of Union through the Scottish parliament,—exertions which in the opinion of many cost him his life.

The biography of John, second Earl of Stair, may be said to form the *pièce de résistance* of my bill of

fare. From the great amount of original MSS. relating to him in the Stair Collection, materials for the Annals of the second Earl were before me in greater abundance than in the case of his father and grandfather. He will be seen in a variety of characters—as the campaigner under Marlborough, and the friendly correspondent of John, Earl of Mar (to whom in the course of a short time after he stood in a very different relation), as the ambassador at Paris, of European celebrity, during the regency of the Duke of Orleans, watching the proceedings of the Jacobites and the Insurrection of 1715, negotiating continental treaties, and quarrelling with his adventurous countryman Law; then relegated to his estate in Scotland, joining the opposition against Sir Robert Walpole, and finally invested with the chief command of the British army, and fighting the battle of Dettingen.

If the faults of these personages have not been extenuated, nothing has been set down groundlessly to their prejudice. Sufficient evidence has been laid before the reader to enable him to form a judgment of their characters. I might possibly have abridged to a greater extent, and given more of my own writing instead of quoting the original pieces; but it appeared to me that the value and *race* of many curious and historical letters and documents would thereby have been lost. Original letters, carefully preserved, in not a few of which the gold dust formerly used for drying the ink still adheres to the

paper, must (one would say), if any thing can do so, show the very "form and pressure of the time." Where materials crowded too much upon me, I have made *appendices* to certain of the chapters, and have endeavoured to render this frequently neglected portion of a book more accessible and readable than it sometimes is.

The spelling of the MSS. has been for the most part modernised, for I found the original spelling, even in letters of the same person, so irregular and arbitrary that it could have answered no useful purpose to preserve it exactly, while the sense of many passages would have been less easy to follow. Characteristic old words and modes of expression I have not altered.

The only publications hitherto of Stair Letters or Papers that I am aware of are the Journal and a small portion of the Correspondence of the second Earl of Stair during his embassy at Paris, 1715-1720, printed in the second volume of the Hardwicke 'State Papers,' and an inconsiderable collection of extracts of letters from Sarah, Duchess of Marlborough, to the same Earl, which had come into the possession of Horace Walpole's correspondent, Miss Berry, and were printed by her as illustrative of 'Walpole's Reminiscences.'

Such as they are, the Annals I now venture to present in these volumes are due in a considerable measure to the Reports of the Historical MSS. Commission, by which my attention was first drawn to the valu-

able collections in the possession of the Marquis of Lothian, the Earl of Stair, and Robert Dundas, Esq. of Arniston; to each of whom I take this opportunity of tendering my grateful acknowledgments for the unreserved manner in which they have placed their family papers at my disposal. I have also very sincerely to thank David Laing, Esq., and John Webster, Esq., for the use they have granted me of original letters in their possession.

J. M. G.

June 1875.

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George, third Lord Reay,	*Do.*
The second Duke of Richmond,	*Do.*
Lady Susan Keck,	*Do.*
John, fourth Earl of Loudoun,	*Do.*
Charles, third Earl of Sunderland,	*Do.*
Sir James Agnew, Bart.,	*Do.*
Sir (or Mr) Gilbert Heathcote,	*Do.*
F. M. the Duke of Berwick,	*Do.*
Charles, ninth Lord Elphinstone,	*Do.*
The Lord-Chancellor Hardwicke,	*Do.*
The Duc de Noailles,	*Do.*
Leopold, Prince of Anhalt,	*Do.*
Count Kevenhüller,	*Do.*

ERRATA.

VOL. I. Page 252, line 7 from foot, *for* "disma" *read* "dismal."
,, ,, 267, line 12 from top, *for* "poeple" *read* "people."
,, ,, 308, line 9 from foot, *delete comma after* "prince."
,, ,, 311, lowest line, *for* "this" *read* "the next."

VISCOUNT STAIR

BORN, 1619; *DIED*, 1695.

VISCOUNT STAIR.

CHAPTER I.

Genealogy of the Stair family—Early Protestant reformers—Birth and education of James Dalrymple of Stair—Accepts a commission in Lord Glencairn's regiment—Becomes a regent or teacher of philosophy in Glasgow University—Marries an heiress—Removes to Edinburgh, and exchanges philosophy for the profession of the law.

The family of Dalrymple is of very considerable antiquity in Ayrshire. The name was derived from a baronial estate adjoining the river Doon, which was possessed by Dalrymples early in the fourteenth century, and was situated in what is now the parish of Dalrymple in that county. The principal family of Dalrymples in the fifteenth century was that of the Dalrymples of Laucht, one of whom acquired the lands of Stair-Montgomery on the water of Ayr, about the year 1450, by marriage with the heiress of these lands, Agnes Kennedy,—the relationship of the parties being so near, that a papal dispensation was requisite to legalise the marriage.* Their son,

* Contemporary Charters in possession of the Earl of Stair; Crawford's Peerage, p. 451; Douglas's Peerage, by Wood, *voce* Stair.

William Dalrymple, married Marion (daughter of Sir John Chalmers, of Gadgirth in Ayrshire), who is mentioned by the name of Lady Stairs in Knox's 'History of the Reformation in Scotland,' as having been one of the Lollards of Kyle.*

This little party of early reformers, including the wife of Dalrymple of Stair (or Stairs), were called, in the year 1494, to appear before the Council of James IV. of Scotland, on a summons by Blackeder, Archbishop of Glasgow, to answer for their heretical opinions; the charge against them enumerating most of those articles of belief, contradicting the teaching of the Roman Catholic Church, upon which the Protestant reformers afterwards took their stand. The king treated the charge lightly, and, after a formal hearing and a disputation between the Archbishop and one of the Lollards, the accused persons were dismissed from the bar of the council, not without some ridicule of their ecclesiastical assailant.†

John Dalrymple of Stair, grandson of William Dalrymple and his heretical wife, was among the first of the gentry in Scotland who made open profession of the Reformed doctrines, joining the Earls of Glencairn and Lennox when they appeared in arms in 1544, at Glasgow Muir, against the Governor of Scotland, the Earl of Arran. His son James was a staunch adherent of the Scottish Reformation of 1560, marrying Isabel, daughter of Thomas Kennedy of Bargany, by whom he had two sons, John Dalrymple of Stair and James Dalrymple of Drum-

* Kyle is a district of Ayrshire.

† Knox's Reformation in Scotland, *ad init.*; Pinkerton's History of Scotland from the Accession of the Stewarts, ii. 418.

murchie. The elder of these brothers had an only son, James, who in 1620 made over the lands of Stair to his uncle, James Dalrymple of Drummurchie, who had married, in 1617, Janet, daughter of Kennedy of Knockdow.* The only child of this marriage, James Dalrymple, afterwards President of the Court of Session and Viscount Stair, was born in his paternal home of Drummurchie, in the parish of Barr, Ayrshire, in the month of May 1619.

Deprived by death of his father when but four years old, he was brought up under the care of his mother, who is noted as having been "a woman of an excellent spirit;" and he acquired the rudiments of his education at the parish school of Mauchline.† At the age of fourteen he was entered at the University of Glasgow, where, after passing through the usual Scottish curriculum of study, he took the degree of Master of Arts in the year 1637, his name standing first on the list of graduates in the university rolls.

James Dalrymple betook himself in the following year to Edinburgh, where the proceedings of the numerous party of all classes who were adverse to the introduction by King Charles I. of the Episcopal Church service-book, and also to his court of High Commission, already pointed to an issue of civil war.

The history of these eventful years has been often told. The celebrated "National Covenant," drawn

* Deeds and Inventory of Titles in the possession of the Earl of Stair. In their genealogy of the Stair family, the peerage writers, Crawford and Douglas, have not taken account of James Dalrymple and Isabel Kennedy of Bargany having had two sons, the younger of whom was the father of Viscount Stair.

† Forbes's Journal of the Session, Introduction.

up at Edinburgh in February 1638, was sworn to by numbers there and elsewhere in the course of the year. Among these early Covenanters there can be no doubt James Dalrymple was included.

The king having agreed to the calling of a General Assembly, the covenanted Assembly which met at Glasgow in the autumn of 1638 at once put aside Episcopacy, with or without a liturgy, and decreed the setting up of Presbyterian Church government, which had been in abeyance since 1612.

The estate and manor of Stair,* though it gave to its possessor the rank of a "laird" or lesser baron, was of no great extent or value; and it is probable that the young proprietor, after finishing his education, proposed to himself employment of some kind, if not engaging in a profession. The Earl of Glencairn had just raised a regiment in aid of the supporters of the Covenant, to vindicate the rights and liberties of the kingdom of Scotland against the "invasions" (as they were called) in ecclesiastical matters of Charles I.; and in this regiment Dalrymple was offered and accepted a captain's commission.† Glencairn's military career on the side of the Covenanters was a very short one, and he became afterwards a zealous royalist. There is no record of Captain Dalrymple's military

* From an Act of Parliament in 1669, ratifying a Crown charter in favour of Sir James Dalrymple of the lands of Stair, it appears that these lands included "tour, fortalice, and manor-place," with corn-mill and salmon-fishings in the water of Ayr, &c.—Act. Parl. Scot., vii. 585. The old manor-place still remains.

† Forbes's Journal; Apology for Sir James Dalrymple, by Himself, 1689. As this tract is now rare, it has been reprinted in the Appendix to Chapter viii.

STAIR HOUSE, AYRSHIRE.

services; but he would seem to have been connected with the regiment, and wearing its uniform, for about two years.

A vacancy having occurred in the situation of regent or professor of logic in the University of Glasgow in 1641, he presented himself as a candidate at the request of several of the professors. The election was by a comparative trial, at which Dalrymple appeared in his military uniform of buff coat with scarlet facings. He was declared the successful candidate, and thereafter continued for some years at Glasgow lecturing and studying privately.* His lectures were approved of, and acquired for him considerable reputation; while his conciliatory manners and gentlemanly address recommended him to his fellow-professors as well qualified to represent them in their professional communications with the government authorities in Edinburgh. His visits there made him known to the lawyers and society of the Scottish metropolis.

By the rules of the university, a professor or regent who was a bachelor was obliged to resign his chair if he married,—a relic of monkish observances which had survived the Reformation. The learned wight who proposed bringing a wife into the college cloisters, and thus losing his chair, might however be re-elected. In accordance with this rule, when Dalrymple, two years after his appointment, ventured to engage in matrimony, he resigned and was re-

* In the Scottish universities there was little, if any, actual difference between a professor and a regent or teacher; see Jamieson's Scottish Dictionary and Supplement, *voce* Regent. The notes, in Latin, of one of the pupils attending James Dalrymple's logic class, dated 1643, are preserved in the Advocates' Library of Edinburgh.

appointed. He married Margaret, eldest daughter and heiress of James Ross of Balneil, in Wigtonshire, who brought him an estate of £500 sterling of yearly rent, with the house or castle of Carsecreuch, near Glenluce. Margaret Ross (or Lady Stair, as she was called by the custom of Scotland, long before her husband was made a peer) is characterised by Sir Walter Scott, in the introduction to the 'Bride of Lammermoor,' as an able, politic, and high-minded woman, so successful in whatever she undertook that the vulgar and superstitious ascribed her power to necromancy and a compact with the evil one.*

In the intervals of his duties as a teacher of logic, Dalrymple employed himself in studying the philosophy of law, the law of nations, and the civil or Roman law, upon which last the municipal law of Scotland is mainly based. In the year 1647 he came to the resolution of resigning his chair.† He went to reside in Edinburgh, where in his twenty-ninth year he took the usual steps for being called to the Scottish Bar, and was admitted an advocate in February 1648. He soon attained considerable standing in his new profession, whose members were not, at the time of his admission, particularly distinguished for ability, and was named one of a commission "for compiling a formal model and frame of a book of just and equitable laws for the administra-

* "Whatever resemblance" (says Sir Walter) "Lady Ashton may be supposed to possess to the celebrated Dame Margaret Ross, the reader must not suppose that there was any idea of tracing the portrait of the first Lord Stair in the tricky and mean-spirited Sir William Ashton. Lord Stair, whatever might be his moral qualities, was certainly one of the first statesmen and lawyers of his age."

† Minutes of the Faculty of Arts of Glasgow University, April 1647.

tion of justice, to be established and authorised as a perpetual law in all time coming by his Majesty and Estates of Parliament;—and for abrogating any bygone Acts of Parliament which had fallen into desuetude or become superfluous."* The object of this commission, which pointed apparently to the formation of a code and a revision of the statute law, was meritorious; but in the troubles that followed it was lost sight of.

* Act. Parl. Scot., vi. 432. The reference is to the folio edition of the Scots Acts, in nine volumes; the small edition of the Statutes being usually referred to according to the year and chapter.

CHAPTER II.

James Dalrymple goes to Holland as secretary of the Commission sent by the Scottish Parliament to invite Charles II. to come to Scotland to be crowned—Judicial arrangements under the Protectorate—The "Tender"—The Commonwealth judges—Dalrymple offered a judgeship by General Monck, which he accepts—The Restoration.

The Committee of Estates of the Scottish Parliament* having, soon after the execution of King Charles I., which they highly resented, despatched commissioners along with a deputation of the Presbyterian clergy, all of them Covenanters, to the Hague, to invite Charles II. upon certain conditions to come to Scotland to be crowned, James Dalrymple was named secretary to the Commission. Their negotiations with the young king came to no result; but at his own request another Commission, with Dalrymple again as secretary, was despatched to Breda in the following year, to make a second

* The Scottish Parliament, sitting in one chamber, consisted of the three Estates of the Nobles, the Freeholders—represented by the members for shires—and the Burgesses—represented by the members for burghs. It was presided over by the king in person, or his commissioner. The measures and business to be brought before Parliament were for the most part prepared previously by a Committee of the Estates, called "Lords of the Articles," the constitution and organisation of which had the effect, in ordinary times, of throwing a preponderating influence into the hands of the Government.

attempt at agreement. The main condition insisted upon was a formal assent by Charles to the Covenant and the Presbyterian Church discipline, which the young king at last agreed to comply with, though much against the grain. The commissioners were well satisfied with the tact and moderation displayed by their secretary, whose conciliatory address is supposed to have aided (whether to much purpose upon the present occasion may be doubted) the agreement between this covenanting commission and the king. When in Holland, Dalrymple extended his knowledge by intercourse with various learned men; and amongst others, with Salmasius of Leyden, author of the 'Defensio Regia pro Carolo Primo,' which was afterwards answered by Milton.* He returned to Scotland to lay the treaty with Charles before the Parliament, and was immediately despatched along with Erskine of Scotscraig, of the Mar family and a staunch Presbyterian, to meet the king and the commissioners upon their landing. This was effected in the Moray Firth in June, about a month after the Marquis of Montrose had been executed at Edinburgh.

In the stirring events that followed, which are matter of general history, Dalrymple bore no prominent part. The royal as well as the Presbyterian cause, both of which it may be taken for granted he continued to promote, were for the time effectually crushed at the battles of Dunbar and Worcester.

Upon Cromwell becoming head of the state,

* Irving's Scottish Writers, *voce* Stair; Impartial Account of Transactions in Scotland concerning the Earl of Breadalbane, the Viscount and Master of Stair, &c. London: 1695.

Scotland was subjected to strict military rule, and placed under the government of a council named by the Protector. The last sitting (prior to the new legal arrangements) of the Scottish Court of Session took place on the 28th of February 1650, the Commonwealth judicatory not commencing its sittings till May 1652.*

It consisted at first of seven judges, four English and three Scottish, who were appointed by commission under the Great Seal, to hear causes in term time, and to make regular circuits.† There was no permanent president of the court, the judges presiding each for a week by rotation. The decision of causes, in the first instance, by single judges sitting in the "Outer House," was abolished, though in a few years afterwards restored. The greater proportion of the barristers and agents continued to practise in the new court, until, in 1654, an oath called the "Tender," engaging to be faithful to the Commonwealth of England, without king or House of Lords, was imposed by Cromwell upon all persons

* Balfour's Annals of Scotland, iv. 18; Brunton and Haig's Senators of the College of Justice (Edinburgh: 1832),—an accurate work drawn from original sources, on the plan of Lord Hailes's Catalogue of the Lords of Session.

† Although the number of Cromwell's judges in this supreme court was originally seven, it would appear from a State paper in the Thurloe collection (Aug. 20, 1657; vi. 470) to have been afterwards raised to eight by the addition of another Scottish judge. In this paper, which is addressed by General Monck and the Scottish Council to the Protector, the account of the judges' salaries and contingencies is stated as follows:—

Four English judges at £600 sterlg. per ann. .	£2400
Four Scots judges at £300 sterlg. per ann. . .	1200
Contingencies for the Circuit and Criminal Courts,	550
	£4150

in public situations. This occasioned so much dissatisfaction that Dalrymple and all the most eminent practitioners withdrew from the court rather than take the "Tender," and only consented to return when the obnoxious oath was in effect dispensed with.*

In the same year Dalrymple was named one of a deputation from the Faculty of Advocates, to wait upon the four English judges for the purpose of obtaining a restoration of the ancient form of the Outer House tribunal. The request was assented to; and it is not improbable that the additional Scottish judge, who appears to have sat soon after this date, was appointed for the trial of Outer House causes.†

The judges under the Protectorate are usually considered to have administered justice with more regard to equity and common-sense than to legal principle, but at the same time with a rectitude and freedom from bias greater than was ever seen in the Scottish courts before this period, and for some years after the Restoration.‡

* Apology for Sir James Dalrymple.

† See previous note; and Brunton and Haig's College of Justice, p. 362.

‡ Laing's History of Scotland; Scott's Tales of a Grandfather. If Cromwell's "kinless" judges were free from some of the influences which in Scotland interfered with the purity of the administration of justice, a letter from General Monck to Secretary Thurloe, dated from Dalkeith, 17th February 1656, tends to show that they were not exempt from an occasional exercise of undue influence on the part of the Protector himself:—

"Honoured Sir,—Being earnestly desired by the Laird of Buchanan (who is one that hath been very faithful and serviceable to us) to write to you in his behalf, I make bold to acquaint you that his Highness, about two years since, was pleased to grant an order to the judges in favour of Lieut.-Col. Osborne, between whom and Buchanan there was a suit depending, whereupon a decreet was passed against the said Buchanan, which truly I am persuaded, if his Highness had

Whatever may have been the cause of it, the vacancies occurring by death on the Commonwealth bench were not readily filled up, and the court in Edinburgh was by no means in a palmy state in the year of grace 1657. In a letter to Secretary Thurloe from General Monck, now president of the council, and chief manager in Scotland, he declares himself much troubled for want of another judge;—"If you send down one, it will be necessary he be one that is very fit, and knowing the practique of the laws of this nation, that he may carry on the business of the Outer House; and if you should not appoint a fit man for the business, you had as good put in none." *

Although Monck advised in this way as to the appointment of judges and other official persons, the Protector retained in his own hands the actual appointment and nomination. An offer of a judgeship having been made by Cromwell to Alexander Brodie of Brodie, who had been a Lord of Session under the Parliamentary rule of 1649, and the offer being declined, Monck wrote directly to the Protector (23d June 1657) suggesting the appointment of James Dalrymple:—

"May it please your Highness,—Having received the enclosed letter from my Lord Brodie, in answer to your Highness's offer to be a judge, and perceiv-

been rightly informed, he would not have done; for I am persuaded, if it had not been for his Highness's order, the business would have gone on Buchanan's side; and all that he now desires is that his Highness would be pleased to grant an order to leave it to the judges to proceed upon the hearing of the whole, according to justice and the laws and practice of this nation. . . .—I remain, &c.

"GEORGE MONCK."

* Thurloe's State Papers, vi. 329.

ing he is not free to it, I make bold to mention to your Highness one Mr James Dalrymple as a person fit to be a judge, being a very honest man, a good lawyer, and one of a considerable estate: there is scarce any Scotchman or Englishman who hath been much in Scotland but know him; of whom your Highness may inquire further concerning him." * Some days after this, Monck wrote again on behalf of the Council of Scotland to acquaint the Protector that, from the death of another of the judges that very day in court, it was absolutely necessary to appoint a new judge; and that they had pitched upon a person of eminent abilities—namely, Mr Dalrymple, of whose qualifications and affections they have ample satisfaction, to be one of the commissioners for administration of justice, at the salary fixed for the Scottish judges of £300; of which choice the council humbly craved leave to desire his Highness's approbation.

This appointment being sanctioned by a letter from Cromwell to Monck, the question with Dalrymple was, whether he should accept it. He did so at the earnest solicitation of a number of friends whose advice he asked; distinguishing between commissions granted by usurpers for behoof of the people and dispensing of justice, and commissions for sitting in councils of State and establishing the usurped power. He took his seat on the bench in July 1657, without any other oath being administered to him but that *de fideli administratione officii*.†

* Thurloe's State Papers, vi. 367.

† Apology for Sir James Dalrymple; Brunton and Haig's College of Justice.

General Monck continued to regard Dalrymple with favour, and while concealing his own sentiments under the cloak of a strict reserve, he occasionally asked the advice of his legal friend. At a very important crisis, when on the eve of setting out with his army for England, ostensibly to support the Rump Parliament, which had revived itself after the abdication of Richard Cromwell, the general called Dalrymple to a private conference, desiring his opinion what was best to be done for settling the three nations and restoring tranquillity. He advised the calling of a full and free parliament, at the same time recommending earnestly to Monck to interpose effectually at London for the re-establishment of the administration of justice in its ordinary channels.* The course thus said to have been advised was that pursued by General Monck after he had made good his footing in England, and got quit of the Rump. Upon the new parliament being called, Charles II. was restored to his kingdom, unfettered by any conditions or limitations beyond what already existed at common law, and buoyant with his unexpected success.

* Forbes's Journal. For two years after the death of Oliver Cromwell, the courts of justice in Scotland were shut. Upon the country emerging out of the short anarchy that succeeded the Protectorate, the only species of tribunal open (and that chiefly for redress of grievances suffered under the Commonwealth) was a Parliamentary Committee appointed originally for Bills and Trade, whose proceedings were of a summary and informal character. — Sir G. Mackenzie's Memoirs of the Affairs of Scotland, p. 21.

CHAPTER III.

James Dalrymple is knighted by King Charles, and made a judge of the Court of Session—Establishment of Episcopacy in Scotland—Declaration against the Covenant appointed to be taken by all persons in public trust—Sir James Dalrymple refuses to take it without an explanation—Is in danger of losing his judgeship—Letter to Lauderdale—How the matter was arranged—He is made a baronet.

Soon after the Restoration, Dalrymple repaired to London in the company of the Earl of Cassilis, a Presbyterian peer to whom he was related, and who had been one of the commission sent to invite Charles to Scotland upon the execution of his father. He was graciously received at Court, and knighted by the king. He had two friends there, both remarkable men—Monck, now Duke of Albemarle, and the Earl of Lauderdale, once a Covenanter, and now, after years of strange vicissitudes, Secretary of State for Scotland. We may suppose that it was partly on Lauderdale's recommendation, and partly from the king's remembrance of him in his own days of adversity (though the royal memory in such matters was proverbially short) that Sir James Dalrymple was included in the first commission of Scottish judges. In accordance with the custom of Scotland,

at a time when the judges of the Court of Session were almost always men of landed property, he took the title of Lord Stair, from his estate. He was invited, both then and on subsequent occasions, to become a judge in the criminal or Justiciary Court, from which, however, he resolutely excused himself, alleging as his reason the danger of acquitting the guilty or wounding the innocent in such matters.* In about a year after, he was named by the royal commissioner (Middleton) vice-president of the Session, in the absence of the president, Sir John Gilmour, which appointment was formally approved by the other judges; and he acted in that capacity whenever the president was absent from court.†

The annoyance to which Stair was exposed in the course of the reign of Charles II. from tests and declarations, harassing to men of principle and utterly useless to bind men of no principle, very soon commenced. In the third year of the Restoration, Episcopacy was formally re-established.‡ While Lauder-

* Apology; Forbes's Journal. Lord Macaulay (England, chap. xvi.) when accounting for the rigid Covenanters and Presbyterian non-jurors keeping aloof from the government of William III. says of Stair and his son Sir John Dalrymple: "The younger Dalrymple who had prosecuted the saints, the elder Dalrymple who had sat in judgment on the saints, were great and powerful." Now the fact is that Sir James Dalrymple, Lord Stair, at no period of his life sat in judgment in a criminal proceeding. As a member afterwards of the Privy Council, he constantly advised lenient measures, and could not be said to have there *sat in judgment* on the saints.

† Brunton and Haig's College of Justice; Books of Sederunt.

‡ The re-establishment of Episcopacy, to which Stair was opposed, was mainly due to the king, encouraged to it by his English counsellors, and by his Scottish Commissioner, the Earl of Middleton. At a meeting in London of the Scottish Privy Council, called to discuss the question of church government, a short time before the sitting of the Parliament in May 1662, the Earl of Crawford, and Lord Lauderdale, Secretary

dale at once sacrificed his own opinion in favour of Presbytery to the royal pleasure, unavailing remonstrances were made by Bruce, Earl of Kincardine, the Earl of Crawford, and others; but so decided was then the influence of Government in the Scottish Parliament, that the Act for restoring Episcopacy was carried without the least difficulty at the very commencement of the session of 1662.* By way of fortifying the Episcopal establishment, another Act was immediately passed, ordaining the following declaration to be taken by all persons in public trust:—

"I, ———, do sincerely affirm and declare that I judge it unlawful to subjects, upon pretence of re-

for Scotland, with several other members of Council, were in favour of summoning assemblies of the clergy and lay elders in order to be better satisfied as to the inclinations of the people. Upon Middleton proposing in the Council the change to Episcopacy, in which he was supported by Lords Glencairn and Rothes, Lauderdale answered that this motion was of greater importance than that it could be seriously determined without many thoughts and much information, for upon a resolution in this depended the quiet of this kingdom, which was very unmanageable in matters of religion; and he therefore proposed that his Majesty might either call a General Assembly or consult the provincial assemblies of each county, which, because they consisted of ministers and lay elders, would acquaint his Majesty with the inclinations of his subjects. After an unsatisfactory debate, the king closed the meeting, telling them he perceived that most voices in the Council were for Episcopacy, and therefore he resolved to settle it with all diligence.—Sir G. Mackenzie's Memoirs of Scotland, p. 52-56; Letter of Lord Lauderdale in the Almack Collection of MSS., referred to in First Report of the Historical MSS. Commission, p. 55.

* Three of the persons most prominent in the formal re-establishment of Episcopacy, and in the stringent and impolitic measures afterwards had recourse to for maintaining it in the recusant districts (chiefly the southern and western shires) have been celebrated by Sir Walter Scott in his novel of 'Redgauntlet.' Amongst the weird revellers described in "Wandering Willie's Tale" as seated round the table of the old oak parlour in the phantom castle of Redgauntlet, the "fierce Middleton," the "dissolute Rothes," and the "crafty Lauderdale," are conspicuous.

formation, or other pretence whatsoever, to enter into leagues and covenants, or to take up arms against the king or those commissionated by him; and that all these gatherings, convocations, petitions, protestations, and erecting and keeping of council tables that were used in the beginning and for carrying on of the late troubles, were unlawful and seditious. And particularly that these oaths, whereof the one was commonly called 'The National Covenant' (as it was sworn and explained in the year 1638, and thereafter), and the other entituled 'A Solemn League and Covenant,' were, and are, in themselves unlawful oaths, and were taken by and imposed upon the subjects of this kingdom against the fundamental laws and liberties of the same: And that there lyeth no obligation upon me or any of the subjects from the said oaths, or either of them, to endeavour any change or alteration of the government, either in Church or State, as it is now established by the laws of the kingdom."

The great design of this Act, according to Sir George Mackenzie, was to incapacitate the Earl of Crawford, a staunch Presbyterian, from being Treasurer, and the Earl of Lauderdale (who, from his antecedents and former zeal for the Covenants, was considered favourable to Presbytery) from being Secretary for Scotland; "but Lauderdale laughed at this contrivance, and told them he would sign a cartfull of such oaths before he would lose his place." * Lauderdale accordingly swallowed the Declaration, and retained his place; while Middleton, the contriver of the oath, had the satisfaction of turning out Crawford, who refused the Declaration, from his office of Treasurer.

* Memoirs of the Affairs of Scotland.

Upon this trying occasion, Stair, taking into view, as we must suppose, the previous tenor of his life, and his covenanting professions, made a stand against the Declaration, and addressed to the less scrupulous Lauderdale the following letter, in which he carefully sets forth his loyal sentiments, while, at the same time, he cannot see his way to signing the oath :—

"For the Earl of Lauderdaill,
Lord Secretary of Scotland.

"Hamilton, *August* 4, 1663.*

"My Lord,—It was very bad fortune to miss your Lordship this day at Hamilton, though I rode for it with all the haste I could, after I got notice of your coming west. Being uncertain of the time of your abode in this country, I could not forbear to give you the trouble of this line, to signify that there is nobody more sincerely and affectionately your servant than myself, or more sensible of the undeserved favours you have done me ; nor shall I ever be so ungrateful as not to serve you to my outmost power in whatever station I shall be. It is like my unclearness in the Declaration to be enjoined to those in publick trust may leave me less opportunity, but never less readiness ; and lest it might be apprehended that my hesitation is from evil principles in myself, or from the opinions of others from whom I would not differ, I shall unfold the inwards of my soul to your Lordship in both these, as in the sight of Him who only searcheth hearts. I am clear that in the King's Majesty's race

* This is the first of a series of autograph letters of Lord Stair in the possession of David Laing, Esq., none of which have been hitherto published.

and royal government is unseparably wrapt up the wellbeing of this kingdom, not only alike with but more than his other kingdoms; which, being so weighty in the balance of interest, would in all things preponderate us, if the balance were not holden by that royal hand, whose justice and special interest in and affection to this poor nation doth not admit of inequality, not only reason, but experience, in all revolutions, how fair soever the pretences were, hath made palpable. I am also clear that it is the basis of government that private opinion must yield to publick, and that without force and resistance to authority; the very antithesis of government being that parties do not submit to a common judge or authority, but wrasle out their opinions and interests by force. I am clear that all actings out of the channel of law are irregular; and though there be not actual force, yet they are unlawful and seditious, and that no engagement, covenant, or oath, can justify them. I do also with like solemnitie affirm that, in this matter, I stick not upon the opinion, pleasure, or satisfaction of any party or person under heaven,—whom I shall never put in balance with my duty and desire to serve my most gracious soverayne in a publick station, without respect to honor or profit, but to do his royal pleasure, to whom I am not only nationally, as a subject, but singularly and signally obliged by his Majesty's constant good opinion of me, and his royal benignity and clemency to me. God is my witness there is nothing holds me but my conscience being unclear as to that Declaration, as it is conceived. I crave your Lordship's humble pardon for my diverting you from more weighty affairs with this rude but real freedom

exprest in haste, after I had ridden night and day to kiss your hands, and to say that indeed I am, my Lord, your Lordship's most humble and affectionate servant, JA. DALRYMPLE."

It must be admitted that in this epistle there is a certain amount of special pleading, and a greater expression of devotion to Lord Lauderdale than perhaps the occasion required. But Lord Stair considered himself mainly indebted to Lauderdale for his judgeship, and (notwithstanding his stickling about the Declaration) was probably not unwilling to remain upon good terms with the powerful minister for Scotland. In the course of a month he writes again, suggesting that Lord Lauderdale should sound the king as to his (Lord Stair's) waiting upon his Majesty in London, and personally explaining himself on the subject of the Declaration :—

"STAIR, *Sept.* 1663.

"MY LORD,—I was told by a friend that it was thought very expedient for me to wait upon his Majesty anent the Declaration, that what I desired might be obtained more easily, and done more privately without being exemplary. I am not a little obliged to those who were pleased to notice me so far in my absence. I hope I shall not forget so great kindness. I could return no positive answer when it was told me ; but having since time to think upon it, it is my humble opinion that it were necessar something were moved to his Majesty : first, that if such a thing be attainable, and no other wayes than by doing it there, I might go to do it ; but to go upon

uncertainty might make these who would be unwilling (either out of prejudice to persons, or that any such preparative might be) be on their guard to oppose it; and besydes, I am bold to believe your Lordship is that tender of me that you would not load me with more inconvenience. If that should miss by an application, how much more might it offend if I did abide by my former resolution not to go further, and what reproach it would leave on me as hunting after publick employment, which, if it were not to serve God, the king, and my country, would not be of any interest to me, who am so desirous of quiet, and to live without observation! I do not resolve to go so much as to Edinburgh until I know, after your Lordship's return to London, what you will command." *

The Declaration was signed by the president of the Session, Sir John Gilmour of Craigmillar, and by all the other judges except Lords Stair and Arniston (Dundas).† At the time it was tendered to the judges, in the beginning of the year 1664, Lord Stair was in Ayrshire attending his mother's funeral. He remained in the country at this critical juncture, living in retirement at his house of Stair.‡ While

* Laing MSS.

† In a letter from Lady Margaret Kennedy to Lauderdale, dated the last day of December 1663, her Ladyship writes: "I am very sorry Stair and Arniston are not indulged, not most for them, but because the grounds laid down to dissatisfy are still kept, though the intentions are wholly changed; yet the way being kept, the effect follows, that is discontent. I doubt Stair's place will not be easily filled, though it may be soon enough."—Letters of Lady Margaret Kennedy, Bannatyne Club.

‡ Apology for Sir James Dalrymple.

residing there, he had a letter addressed to him by the president of the Session, dated the 5th of February, communicating the king's order to the Privy Council to declare vacant the places of all persons in office failing to subscribe the Declaration by a certain day, and to allow no written explanation to be received. The answer of Lord Stair is preserved in the Court of Session records, and is of the following tenor :—

"Ayr, *Feb.* 15, 1664.

"My Lord,—Your Lordship's of the 5th inst. I received this day, showing that his Majesty, by his letter under his royal hand of 19th December last, had required your Lordships to appoint a short day in which the absent lords of Session might either subscribe the Declaration or refuse it, to the end his Majesty might take care for supplying the place of such as should refuse ; and therefore that your Lordships had assigned the 19th of this instant for me to give my answer thereanent. My Lord, I have already, before the date of his Majesty's letter, sent up to London a resignation of my place in the Session in his Majesty's royal hands, whereby I hope your Lordship and the rest of the lords will be satisfied that I need not come to give any further answer to your Lordship's letter. I shall not cease, while I breathe, to be faithful to his Majesty, and to do him all the service I can, in whatever station I be in, and shall be ready to do what service I can to your Lordships and that honourable House [the Court of Session], which I so much love and honour, as you shall be pleased to command."

Upon receipt of this letter in Edinburgh, a warrant was despatched to London for the king's signature to have Lord Stair's place of judge vacated. Charles was not disposed, however, on this occasion to be so easily quit of his acquaintance of former years, and a royal message was sent to Sir James Dalrymple to wait upon the king in London.* In obedience to this message, in all likelihood suggested by Lauderdale, Stair, accompanied by his eldest son, left home, with the intention also of making a short visit to the Continent, and arrived in London in April. What passed upon his arrival is mentioned in the following letter to Lord Arniston from his cousin, Sir Alexander Hume :—

"WESTMINSTER, *April* 16, 1664.†

"MY LORD,—I suppose that, knowing of my Lord Stair's being here, you may expect to receive some account of his proceedings, which he was purposed himself to have given you by this post, but that he is invited this night to my Lord Lauderdale's country house at Highgate, some four miles out of town, from whence they are to return on Monday next. Before his going out he was with me, and told me he had this morning a large conference with the king—being the first time he saw him—to whom he made an ingenuous declaration of the motives that induced him to make scruple of the subscription required of all in public trust, which he assured his Majesty did not proceed from any want of loyalty. The particulars he had not time to tell me; only in general he said the king was very civil to him, and told him he would

* Apology. † Autograph letter from the Arniston collection.

be very sorry that he should desert his service. So at that time there was no conclusion made, but he is not without hope that the result may be such as he may keep his station, whereof he may be able, after full communication with my Lord Lauderdale, to give you a particular account by the next post, that you may also resolve what is fit for you to do. For, seeing you both agree, as well in sincere principles of loyalty as in scruples of conscience, it is reasonable to expect your affairs may have the like event, wherein my Lord Stair and I will take the best care we can that your absence shall not prejudice you, and my Lord Lauderdale hath also promised his best offices. Perchance it may be necessary that you be at the pains of coming hither, for which, at all adventures, I would have you prepare yourself, though I shall rather wish you may avoid the journey unless it be absolutely necessary."

Lord Stair received an audience of the king, who plainly intimated to him that his resignation was not to be accepted, and that he might give a verbal explanation in what sense he could sign the Declaration. The method suggested by Stair of a verbal explanation which he was himself to receive back in writing from the judge or clerk who tendered the oath to him satisfied Charles, from whom a letter to the president of the Session was immediately despatched in the following terms:* "Having heard Sir James Dalrymple of Stair clear himself in the matter of the Declaration (which he at

* April 19, 1664; Books of Sederunt, quoted in Brunton and Haig's College of Justice.

his return will take), and being well satisfied therewith, and with his good affection to our service, and with his great abilities to serve in that station, We did not think fit to accept of the warrant formerly sent up for demitting his place, of which demission no use has been made. Therefore our pleasure is that he, signing the said Declaration, continue."

On the 20th of April Stair left London for Paris with his son, remaining there till near the end of May. Returning by London, he made a second visit of two days to Lord Lauderdale at Highgate, where he had a final conference as to the matter in question, and then left for Edinburgh. On arriving there he signed the Declaration, with the verbal qualification that "he was content to declare against whatever was opposite to his Majesty's just right and prerogative." This qualification was returned to Lord Stair in writing, probably by the clerk of court who tendered the oath.* Upon which the president and lords of Session "reponed him" in his office, although, in fact, from his resignation not having been accepted, nor the warrant for demission of his place signed or acted upon, it had never been formally vacated. The king further manifested his favour for Stair upon this occasion by conferring on him a baronetcy.

* See Lord Stair's letters to Lord Arniston (in the next chapter) of April 19 and May 28, 1664.

CHAPTER IV.

Lord Arniston deprived of his judgeship on refusing to sign the Declaration as to the Covenants without a written explanation adjected to his subscription—Letters of Stair and of Arniston upon this occasion—Letter of Lauderdale to the latter, and his answer—Was Lord Arniston over-scrupulous or Lord Stair too easy in their respective views of the difficulty?

Now that Lord Stair is again seated upon the bench, with satisfaction to his conscience and to the profession generally, it will be proper to observe what befell his brother judge, Sir James Dundas, Lord Arniston, who, from his Presbyterian opinions and antecedents, was, upon the first motion as to taking the Declaration, exactly in the same predicament with Stair. The fact that Lord Arniston refused to subscribe the required oath, as he was not permitted to qualify it in writing, is well known; but the letters which follow, from Lord Stair (preserved in the Arniston Correspondence), mark very well the difficulty of the situation and the relative circumstances.*

Lord Stair to Lord Arniston.

"EDINBURGH, *Sept.* 12, 1663.

"MY LORD,—Since I saw you I have spoken at large with my Lord Commissioner [Rothes] and my

* These letters are autograph of Lord Stair, and have not been hitherto printed.

Lord Secretary (Lauderdale), and I believe they are as desirous to favour us as we can wish. I have shown that explanation I am free to sign the Declaration with. None can say it should, or in that sort doth, comprehend more. If after they see the king anything may be done, it will be signified to us. What you understand further from time to time, pray you let me hear it from you by a line. This Wednesday's weekly post will carry it, so that you need not want occasion. Remember my service to that noble gentleman, your friend, Sir Alexander Hume, and to your good lady. So rest your Lordship's reall friend and servant,

"JA. DALRYMPLE."

"EDINBURGH, *Sept.* 12, 1663.

"Since my last of this day's date, upon the second thoughts of some of our eminent friends, it is desired that we should go up to London (though on pretence of other affairs), which they do conclude as very little dubious to attain our design. I durst on the sudden say nothing to it, but I am to think upon it. It was your motion before; but there is none of us can supply for the other there, seeing our only way is expected to be that we have given his Majesty satisfaction. I lay it before you that you may think upon it, and, if you wish, put yourself in readiness, and be there with your friends. It is the greater encouragement for us that none of our great men, though discording in other things, will differ in this, that we be looked out in such a matter. If I had no more difficulties than you, I would do it; but my poor wife is near her lying. That will so retard me

as that time would hardly suffer for me to go and return in time. You will, by the Ayr post, communicate your thoughts and purposes."

"STAIR, *Sept.* 21, 1663.

"Yours of the 16th instant I received. You have considered aright of these two friends who were thinking upon our concernment. I am fully of your mind that there is nothing to be done till they go up, and that then the easiest and securest way for us were that our business were moved there, and we both called (if need were) thither, to do what was necessar. Only a man is a lion in his own cause, and will keep it afoot till there be some issue. I leave that to your prudent consideration; but truly I am not in any freedom to leave this place till I know what becomes of my wife, who, besides the hazard of childbirth, is very unwell, and in great hazard otherways. I know you are a kinder husband than to think that can be dispensed with; but my opinion would be, that without any noise of going till some time after our great ones are up, and might give an accompt of public affairs, yourself went up. You have not yet seen the king since he came home, and ofttimes the [winter] uses to be as good weather as any in the year. I should be heartily glad you were restored, whatever comes of me; and I am sure you might be helpful to both, whatever you do. Let the medium thought upon be as little known as possible, lest those who will be against it, more for the example of it than for our interest, prevent it. The line I think safest and securest I have enclosed.*

* The following draft or memorandum is inscribed (not in Lord

Let me hear your resolution, and remember me to your lady and all friends to whom you think fit to mention me."

The Same to the Same.

"STAIR, *Feb.* 15, 1664.

"Your last came but one of these days to my hand. As to your desire of my coming east in March, to put some point to the difference betwixt my Lord Lothian and you, I will not have my horse to shoe when you have to do; but I think a little further in the year, when weather is fairer and the day longer, will be better. It is no small difficulty to draw me to an Edinburgh voyage. I much more mean, if your conveniency serve, to wait upon you at Lanrick, near my Lord Lee,* who is to be spared in trouble as much as you can. We will be free of divisions there. Then at Edinburgh a night or two will serve in either case. My kindness and confidence made me so free with you in my last as not to conceal the observations of others. If thereby you apprehend that I laid any blame on you, mind it was far from my thoughts; but it is my rejoicing to have a sharer in my lot whom I honour and love so much, though like motives moved us both without our preventing either the other. Remember my service to your lady, and I shall ever continue," &c.

Stair's hand) inside the sheet on the previous pages of which the above letter is written :—

"I doe declair against the actings above-written [viz., in the test oath] in so far as they were against law, and the oaths and obligations foresaid in so far as they may import any obligation to endeavours against law, to the disturbance of the peace of the kingdom."

* Sir James Lockhart of Lee, a lord of Session and Privy Councillor.

The Same to the Same.

"London, *April* 1664.

"I believe you will think it strange to hear of me or from me in this place. It is also strange to myself, who had resolved retirement; but being called hither by friends upon finding of the king's kindness rumoured with me, and hopes of his favour to me, I obeyed, though I knew no particular [reason] that I did not run to you, but kept Carlisle way, whereby I was as near London as Edinburgh. I shall at meeting fully satisfy you in that, and that this is the first advertisement. You may be assured I shall not be forgetful of you, but shall do for you as you were my brother. I cannot say what I can do for myself or any other; but I am sure I shall do for you whatever I can. I am but now come hither, and not yet in a right posture to see anybody or do anything; but when I come to any issue or expectation, you shall be acquainted with it.

"*P.S.*—Send your letter to Daniel Dalrymple, at Mr John Henry's Chamber, or to Master James Ross, at William Ross, Writer to the Signet, his Chamber."

"Whitehall, *April* 19, 1664.

"Since my last I have been with the king, and have found more favour than I do deserve, and more desire of my continuance in his Majesty's service than I could have expected, but no possibility of obtaining an explanation in writ to be subjoined to the Declaration. Something is spoken of in lieu

thereof, but to no effect as yet; neither may I at distance mention it to you. It is necessar for yourself and me and others it be so, and that nothing be spoken of—either endeavour or expectation—till I see you, which, if anything be done to satisfaction, will be shortly. But I hope you will be out of doubt of my diligence for you. I assure you you have some very kind friends here, who do heartily go along with me."

The following is the last of Lord Stair's letters to Lord Arniston on this delicate subject :—

"London, *May* 28, 1664.

"I received two of yours together at Paris, and one since my return. . . . I must still forbear to be particular with you in what is past here; and though you find difficulty to apprehend how it can be that we can sign without explanation in writ, I shall say no more at distance but that this is an equivalent in all respects of adjecting a declaration or provision to a writ—viz., getting the same under the hand of the writer of the writ. That it is so acceptable or so satisfactory, I shall be full with you at meeting. I desire you will be at Edinburgh from the seat of your father on the 7th or 8th."

Lord Arniston was more scrupulous than his friend Stair, and declined adhibiting his subscription to the Declaration unless with an explanation adjected to it in writing, so that the one might be as patent as the other. The Earl of Lauderdale was friendly to him, but could not persuade the king to admit of a written explanation adjected to the subscription.

The Earl of Lauderdale to Lord Arniston.

"WHITEHALL, *Dec.* 8, 1663.

"MY LORD,—At my first arrival, having found the king averse from such a declaration as your Lordship would put in writing, and knowing your absence secured you from being put to it, I delayed urging his Majesty's positive resolution until I could do it conveniently. And now within these two days I have his positive order to let you know that he cannot admit of explanations, because that were positively to state a party of those who do subscribe as the law requires and of those who subscribe with explanations. This his Majesty will on no terms admit, because of the example. And I am commanded to prepare an order to the Session to put all their members to a positive answer. But before I sent it, I thought it my duty to give you this warning, that you be not surprised. I do not need, I hope, to profess my respects to you, nor my desire to serve you. From that consideration I, who am clear, must entreat you to consider well before you abandon your station. And this freedom I hope you will take well from, my Lord, your affectionate servant,

"LAUDERDAILL."

To this letter Sir James Dundas returned the following answer :*—

"*Dec.* 16, 1663.

"MY NOBLE LORD,—I received your Lordship's of the eight days' date yesterday in the afternoon, by

* This letter was copied from the original in the possession of Richard Almack, Esq., Melford, Suffolk. (Arniston MSS.)

which I understand that your Lordship hath been pleased not only to move the business you writ of once and again to the king, but also to watch opportunities of doing it to the best advantage. And as if all this were too small a testimony of your respects for me, you are likewise pleased to give me an express advertisement of the event, that I should not be surprised by hearing it in a way which I cannot evite. My Lord, so very great favour calleth for a greater acknowledgment than I am able to make, and not the less that the success hath not been answerable to your Lordship's desires and endeavours. So I can very freely say; *Caveat successibus quisquis ab eventu.* And not to misspend your Lordship's time (which all men know to be taken up with much greater things), I do in a word return your Lordship most hearty thanks for this and all your favours; and if ever I shall be so happy as to have an opportunity to do you service, I hope I shall not be capable of that unworthiness as to be found forgetful thereof, who now subscribe myself most sincerely, &c.,

"JAMES DUNDAS."

Holding the views he did, Sir James Dundas had no alternative but to resign his place as judge, which he never afterwards resumed.* Some may think that he was too punctilious, and that he might with safety to his conscience have escaped the difficulty by following the precedent set him by Stair. But it must be confessed that Lord Stair's plan of having

* In the Appendix to this chapter will be found several additional letters, addressed to Lord Arniston by his relative Sir Alexander Hume, a courtier resident in London.

his verbal qualification returned to himself in writing, while the subscription to the public document bore no evidence of qualification of its contents, was more ingenious than satisfactory ; while, at the same time, there is some ambiguity in the wording of the qualification itself. And we cannot be much surprised that in the stirring years that followed the Revolution, the more zealous adherents of Presbytery and of the Covenants, whose extreme views Stair always resisted, should be found regarding him with no special favour, although before the end of the reign of Charles he made a decided and patriotic stand in the interests of civil and religious liberty against the government of the Duke of York in Scotland.

CHAPTER V.

Lord Stair's opinion of the difficulties attending the establishment of Episcopacy—Disposal of the office of Chancellor—Contemporary notices of Stair in the letters of Archibald Earl of Argyle—His places of residence—Acquisitions of land—Marriage of his daughter Janet to Dunbar of Baldoon—Letters of Lord Rothes—Assists in improving the constitution and practice of the courts of law.

In the autumn of 1664, the place of Chancellor of Scotland, the head of the judicial administration, became vacant by the death of the Earl of Glencairn. With reference to the question whether the Chancellor should be a Churchman or not, Stair intimates, in the following letter to Lord Lauderdale*, his opinion in the negative, and his sense of the difficulties likely to be occasioned to the Government by the establishment of Episcopacy in Scotland :—

"Ayr, *Sept.* 1, 1664.

"My Lord,—I have nothing to trouble you with, but to tell you that I am far from being forgetful of you at this time, when the settling of the chief place in this kingdom makes many eyes be upon you on very different accompts. I pray God direct the king's Majesty in it that a prudent, sober hand may be adhibited to cement the discontents which are so

* Laing MSS.

many and great. It is not to be imagined that a new frame can be put on a people in Church matters so suddenly and satisfyingly as many would have it. I am still of the opinion I was at first, which I signified to your Lordship in it, but I did foresee and still see more the difficulties occurring therein. We are full of reports every day of the person to be Chancellor; most say a Churchman, which is much desired by some of their friends, and generally by others who have least kindness for them; *tollatur in altum.** People talk also of jealousies between your Lordship and the Lord Primate [Archbishop Sharp]. I believe you will both be so wise as to put a stop to such apprehensions."

The general belief at the time was that the Primate himself was desirous of being chancellor, an office which had to do with politics as well as law business,† there being at least one precedent since the Reformation, in the case of Archbishop Spottiswoode, of a Churchman holding the office. With a view probably not to disappoint this ambitious prelate, Rothes was named in the mean time Keeper of the Great Seal, and three years afterwards Chancellor, when his place of Royal Commissioner was bestowed upon Lauderdale's son-in-law, the Earl of Tweeddale.‡

During the brief interval of Lord Tweeddale's

* This expression, which occurs in another of Lord Stair's letters, may perhaps be freely translated, *Away with such a proposal!*

† Burnet's History, i. 305.

‡ Crawford's Officers of State. The following letter, not hitherto printed, from Lord Rothes (when Royal Commissioner) to the Secretary for Scotland, Lauderdale, is from a collection of Rothes's letters in

mild administration, when Sir Robert Murray* and Lord Kincardine, strenuous advisers of moderate measures, held office, Stair passed the most tranquil portion of his judicial career. When sitting as a single judge in the "Outer House" of the Court of Session, where his personal ability was more brought to the test than when he sat as one of the fifteen judges, he had the greatest character for despatch and justice of any that ever sat upon the bench, all men being desirous to have their cases brought before him.† In one of the letters‡ of Archibald, ninth Earl of Argyle, to Lord Lauderdale, dated 1667, Lord Stair is undoubtedly pointed at in the following passage: "The president of the Session [Sir John Gilmour] hath been ill these two days; it was given

the British Museum, a transcript of which was made some years ago for the Edinburgh University Library :—

"We have sat this night in Council till 8 o'clock, and have received several informations concerning conventicles; they are really become very insolent, and much more numerous. I received an information, which was read in Council, the double whereof is here enclosed, according to which we have issued out orders to sit [sight] some and secure others. There was a party of my Lord Newburgh's troop had notice of one of their meetings, and went to the place; but it being at a moss-side, they went into the moss and laughed at the party, and told the officer at a distance that they were for the king, but as long as they had lives they should never be quiet so long as there were 14 bishops in Scotland, and desired the officer to lay down his arms and they would speak with him. Their number was about fifteen or sixteen hundred, most of them men, and the party was but seven or eight, so they neither got so much as one prisoner nor the least information. . . ."

* Mention is frequently made in the Lauderdale MSS. of Sir Robert Murray or Moray, a cadet of the Abercairney family in Perthshire. He was a person of great accomplishments, and the first President of the Royal Society of London.

† Impartial Account of Transactions in Scotland; Somers's Tracts, xi. 550.

‡ Printed by the Bannatyne Club, Edinburgh, 1829.

out it was a cold, but a palsy is feared, and yesterday he was almost speechless; this day he is better, and passes his time at cards, but it may stick to him. If his place were void, most in Scotland would find but one to fill it. Consider of it, for some would, it may be, be for the Advocate to make room for another." *

In these familiar letters of Argyle several casual notices occur which it is not out of place to refer to as contemporary evidence of the view of his position as a judge entertained and acted upon by Lord Stair himself. The Earl had a dispute with the Bishop of the Isles as to the property of the island of Canna. "I did not" (he writes) "at first understand the business, and I was so tender in it that first I called my advocates and made them debate it with him before me. After that I undertook the bishop before my Lord Stair, as a friend to both. He would give no opinion, because he was to judge in it; but I was glad he should hear us, for the bishop complains a little severely, and threatens to inform his Majesty that he is oppressed, because I allege I possess." † In another letter, Argyle talks of a resolution being started of writing to his Majesty in a cause he had before the Session with one George Campbell, about a house in Inverary; "but upon Lord Stair saying that the matter was then in law, and that they sat there to give justice according to law, and not to be his Majesty's counsellors, it was waived at that time." ‡ The chief seems to have had some difficulty in dealing with his obdurate clansman George Campbell, for in another letter he says: "G. Camp-

* Sir John Nisbet of Dirleton was the Lord Advocate referred to.
† Inverary, April 6, 1665. ‡ May 6, 1669.

bell did refuse to submit differs betwixt him and me to Earls Loudoun, Stair, and Cessnock; so the last session I got him turned out of a roome of land close at my gate. I offered lately to submit the price of his house in town [Inverary] to Colin Campbell, but he would not; so I resolve this session to give him another trial, for he is the worst neighbour I have."

When in Edinburgh during the sittings of the court, Lord Stair is believed to have lived in the house afterwards occupied by his son, Sir Hew Dalrymple, on the east side of the Parliament Close, near St Giles's church. It was the fourth flat of a lofty tenement or "land" near what were called the "President's Stairs," in the quarter where the principal official persons resided, and was burnt in the great fire of the year 1700.*

His residence in vacation time was the mansion-house of the property of Carsecreugh in Wigtonshire, which had come into his possession by marriage and had been rebuilt. It is situated in a bleak moorland district sloping up from the bay of Luce, and has no features of natural beauty. All that now remains of it is a tall gable and attached staircase tower, from which stretches a range of wall with window apertures of large dimensions for that period.

Lord Stair made various additions to his estates of Stair and Carsecreugh by new acquisitions of land, several of these being effected by recourse had to the usual process in Scottish law whereby a creditor apprised or adjudged the debtor's lands, or a portion of them, for his debt, the lands so apprised becoming

* Chambers's Notices of Remarkable Fires in Edinburgh.

the property of the creditor if the debt were not redeemed within a certain time.*

Dame Margaret Dalrymple (her title in Scotland as a baronet's wife) had brought Lord Stair not only an estate but a numerous family of sons and daughters, who were now growing up and being set out in life. The current of their domestic prosperity was in the year 1669 interrupted in a melancholy way by an event which was long remembered in Scottish society. Janet Dalrymple, their eldest daughter, had pledged her troth to a poor noble, Lord Rutherford, whose suit was not encouraged by her parents.† The mother, a proud woman of strong will, exerted all a

* Stat. 1469, c. 36, and 1661, c. 62; Stair, Instit. iii. 2, 4. An instance occurs in the correspondence of the second Earl of Stair, of certain lands in Ayrshire which had passed in this way from the Cathcart family to the Stairs being allowed, by special favour of the Earl of Stair, to be resumed by Lord Cathcart on payment of the original debt for which the lands had been adjudged, many years after the term of redemption had expired. The story of the 'Bride of Lammermoor' hinges partly on the acquisition by Sir William Ashton, as an adjudging creditor, of an estate which had belonged to the family of Ravenswood. It may be supposed that Stair was not inattentive to the local interests of his estates. Thus, in 1669, he had an Act of Parliament passed, upon a petition in his own name and that of the Bishop of Galloway, for a weekly market and two annual fairs at the kirk-town of Glenluce; and by a change of parochial divisions he obtained the erection of the present parish of Stair in Ayrshire.

† The satiric lines of Sir William Hamilton of Whytlaw upon the Stair family, quoted in Scott's Introduction to the 'Bride of Lammermoor,' may be taken as confirming the tradition of Janet Dalrymple's engagement to Lord Rutherford, though, from the well-known personal malice of the author towards Stair, I am unwilling to refer to his wretched verses to any other effect. The Lord Rutherford in question was probably Archibald, third lord, who succeeded his brother in 1668, and died unmarried. (Douglas's Peerage, by Wood.) Archibald was succeeded by his brother Robert, fourth and last Lord Rutherford, who sat in the British Parliament after the Union as a representative peer, and died in 1724. Supposing Archibald to have been the type of Scott's Master of Ravenswood, he was thus not the

mother's influence to break off this engagement, and to bring about a marriage between her daughter and David Dunbar, son and heir of Sir David Dunbar of Baldoon, and nephew to Rutherford. Dame Margaret Dalrymple is said to have worked upon her unfortunate child by insisting on the Levitical law, which declares that a maiden shall be free of a vow which she has vowed, "if her father disallow it in the day that he heareth thereof."* She at last prevailed over Janet Dalrymple's gentler disposition and weaker will, who agreed to marry Dunbar. The marriage took place at the Kirk of Glenluce, about two miles from her parents' house of Carsecreugh, on the 12th of August, the bride riding to church behind one of her younger brothers, who long afterwards spoke of the chilly coldness of her hand as it touched his own when holding by his waist.† The bridal party remained nearly a fortnight at Carsecreugh, from whence the bride was taken, on the 24th of August, to her husband's house of Baldoon, near the town of Wigton, in the parish of Kirkinner. A gallantly attired troop of friends accompanied the married pair, and a dramatic entertainment or masque was prepared for them at Baldoon. But, alas! the bride's health suddenly declined and gave way, and she died at Baldoon, probably of a broken heart, on the 12th of September following.

last of his race, as Ravenswood is represented. In this and in other particulars the 'Bride of Lammermoor' does not correspond with the real history, and the scene and surroundings of the tale are laid later in the century than the event upon which it is founded.

* Book of Numbers, chap. xxx.

† The tradition as to this seems well authenticated. See Scott's Introduction to the 'Bride of Lammermoor.'

Such are the main facts of this "Bride's tragedy," as to which the particulars are to this day involved in mystery, and the traditions varying and uncertain, and therefore unreliable. The only reliable contemporary evidence (from which, indeed, the most important of the facts now mentioned have been taken) is the following Elegy, composed by the Episcopal minister of Kirkinner, the Rev. Andrew Symson, and bearing to be written on the morning of the day of the lady's funeral.* Mr Symson was the personal friend and parish clergyman of the bridegroom, and had, no doubt, taken part in the reception of the bridal party upon their arrival at Baldoon. The elegy takes the form of a dialogue between a stranger and a domestic servant of the house of Baldoon, which is the "place" referred to in the poem:—

"On the Unexpected Death of the Virtuous Lady, Mrs Janet Dalrymple, Lady Baldoon, Younger.

Nupta, Aug. 12. *Domum ducta*, Aug. 24. *Obiit*, Sept. 12. *Sepult.* Sept. 30, 1669.

Dialogus inter advenam et servum domesticum.

Stranger.

What means this sudden unexpected change,
This mourning company? Sure, sure, some strange

* Symson was the author of a poem called "Tripatriarchicon," being the lives of the patriarchs in verse, printed at Edinburgh in 1705. At the end of the poem is a collection of short poems, chiefly elegies, bearing to be written at various dates, by the author of the larger work, amongst which is the elegy mentioned in the text, the whole forming a duodecimo volume now extremely rare. It bears to be printed by the author himself (who, on being ousted from his church after the Revolution, exercised the calling of a printer), and its authenticity has never been questioned.

And uncouth thing hath happened: Phœbus' head
Hath not been resting on the watery bed
Of sea-green Thetis forty times since I
In transitu did cast my tender eye
Upon this very place, and here did view
A troop of gallants; Iris never knew
The various colours which they did employ
To manifest and represent their joy.
Yea, more; methinks I saw this very wall
Adorned with emblems hieroglyphical—
As first the glorious sun in lustre shine,
Next unto it a young and tender vine
Surround a stately elm, whose tops were crowned
With wreaths of bay-tree reaching to the ground:
And, to be short, methinks I did espy
A pleasant, harmless, joyful comedy.
But now (sad change, I'm sure) they all are clad
In deepest sable, and their faces sad.
The sun's o'erclouded, and the vine's away;
The elm is drooping, and the wreaths of bay
Are changed to cypress, and the comedy
Is metamorphosed to a tragedy.
I do desire you, friend, for to unfold
This matter to me.

SERVANT.

Sir, 'tis truth you've told:
We did enjoy great mirth, but now, ah me!
Our joyful song's turned to an elegy.
A virtuous lady, not long since a bride,
Was to an hopeful plant by marriage ty'd,
And brought home hither. We did all rejoyce
Even for her sake. But presently our voice
Was turned to mourning for that little time
That she'd enjoy; she wanèd in her prime,
For Atropos with her impartial knife
Soon cut her thread, and therewithal her life.
And for the time, we may it well remember,
It being in unfortunate September.

Just at the equinox; she was cut down
I' the harvest, and this day she's to be sown :*
Where we must leave her till the resurrection,—
'Tis then the Saints enjoy their full perfection."

Whatever may be thought of these lines as poetry, they are written with feeling and delicacy of taste by a contemporary of the parties, and who had as good access to be acquainted with the facts as any one excepting the bridegroom (whose intimate friend he was) and the bride. The elegy points distinctly to a rapid decline, occasioned by the operation of an unseen cause, but which may be guessed at from the circumstance already mentioned of the lady's affections having been blighted; while not the most distant allusion is made to any such harrowing catastrophe as that supposed in the 'Bride of Lammermoor' to have occurred on the night of the marriage. The thrilling tradition of this event, loose and uncertain as it was, impressed the imagination of Scott; and the result has been the marvellous tale of Lammermoor, which a great living authority not long since declared to be a composition instinct with the spirit of the Greek tragedy.

The bridegroom Dunbar, a cultivated gentleman of unimpeached honour, not at all resembling the "Bucklaw" of the novel, afterwards married a daughter of the seventh Earl of Eglintoun, and died in 1682 by a fall from his horse.† His rival, Lord Ruther-

* That is, buried.

† The only child of this second marriage became the wife of Lord Basil Hamilton, and is ancestress of the present Earl of Selkirk, in whose charter-chest the marriage-contract of David Dunbar and Janet Dalrymple was discovered some years ago.

ford, obtained a commission in the Household Guards, and died in 1685.

A proposal being made in 1670 for a treaty of union between England and Scotland, Lord Stair was named one of the Scottish commissioners for negotiating the treaty. The joint-commission met frequently in London in autumn of that year, but could bring the negotiation to no result. Stair's valuable aid was more satisfactorily given at this time to the proceedings of a Royal Commission, of which he was a leading member, for regulating the Scottish judicatories, and correcting abuses in the order and mode of calling processes and dispensing justice.* The following letter of the Chancellor Rothes to Lauderdale† refers to the proceedings of this commission :—

". . . Our great work which makes a bustle now is our vigorous prosecuting his Majesty's commission for regulating judicatories. At the first meeting I offered up to their consideration all the privileges I pretended to as Chancellor, such as calling and enrolling [processes], and so did the President of the Session; but the Advocate stuck a little, yet now he has done it. The greatest difficulty we have is to order the fees of advocates. Many of the commission have been advocates themselves, or their sons are;‡ yet they

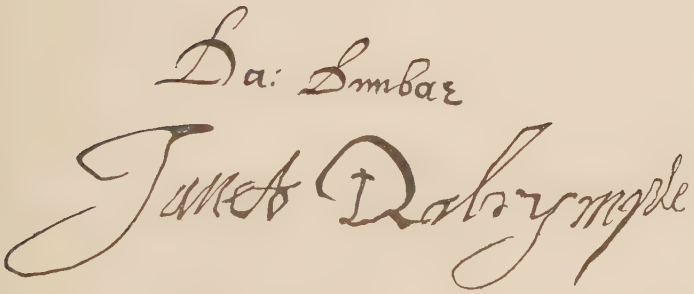
* This Commission was appointed in September 1669.

† Feb. 17, 1671; MS. letters of the Earl of Rothes, in the British Museum.

‡ Lord Stair is probably here pointed at. In questions affecting the privileges of the bar which arose during the deliberations of the commission, and at other times, he almost invariably took the part of the barristers. See Address to the Juridical Society, by the Lord Justice-Clerk Inglis: Edinburgh, 1863.

carry pretty fair, for the point is pressed to purpose; and if you hear not that we order them and the writers, you may conclude that all we have done is not worth two pears to the poor harried country."

The labours of this commission resulted in an Act of Parliament (1672, c. 16), new-modelling the constitution of the Justiciary Court nearly to what it is at the present day, and containing valuable regulations for the practice of the Courts of Session, Justiciary, and Exchequer.



Signatures of the principals to the marriage-contract of David Dunbar, younger of Baldoon, and Janet Dalrymple, in the charter-chest of the Earl of Selkirk.

CHAPTER VI.

Lord Stair made President of the Session and a Privy Councillor—Is in favour of lenient measures towards the Covenanters—Lord Kincardine—Stair's sphere of action, the Civil Bench—His character as a judge—Question of Appeals to Parliament—Letters.

After ten years' discharge of duty as an ordinary Lord of Session, Stair was now to receive that promotion to which his abilities as a lawyer very justly entitled him. Sir John Gilmour of Craigmillar, who had been President of the Court since the Restoration, resigning from age and infirmity, his place was bestowed upon Lord Stair. Approving of this exercise of patronage on the part of Lauderdale, still supreme ruler of Scotland, Sir George Mackenzie, after mentioning the fact, continues,*—"And really Stair was a gentleman of excellent parts, of an equal wit and universal learning; but most considerable for being so free from passions, that most men thought this equality of spirit a mere hypocrisy in him. This meekness fitted him extremely to be a president, for he thereby received calmly all men's informations, and by it he was capable to hear without disorder or confusion what the advocates represented. But that which I admired most in him was, that in ten years' intimacy

* Memoirs of the Affairs of Scotland, p. 214.

I never heard him speak unkindly of those who had injured him."

The new Lord President was, upon his promotion, made a member of the Scottish Privy Council, a situation causing him more anxiety than his high judicial office.* According to the most reliable accounts, he was not a frequent attender of the meetings of the Council, which was at that time in the habitual exercise of very arbitrary powers. When he did attend, his advice was in favour of leniency towards the recusant Covenanters, though he was not of a character so bold and uncompromising as to signalise his opposition to measures of severity by prominent acts. Upon more than one occasion he prevailed with Lauderdale (now raised to a dukedom) to sanction the adoption of certain safeguards to the accused in prosecutions for attending conventicles and for "church irregularities," which made Archbishop Sharp (with whose unrelenting energy the official zeal of Lauderdale and the Crown counsel could hardly keep pace) charge the duke with overturning the national settlement of Episcopacy, and putting the king's interest further back in one month than could be retrieved in seven years!†

It is not a little remarkable with what difficulty the Presbyterians and Covenanters, while they detested Sharp, could be brought to believe that Lauderdale was opposing their party and interests. He

* The original nomination by King Charles II. of Lord Stair to be President of the Session, dated from Whitehall, 7th January 1671, and signed by Lauderdale, is still extant in the possession of David Laing, Esq.

† Forbes's Journal of the Session; Historical Notices, by Sir John Lauder, Lord Fountainhall, 2 vols. 4to (Bannatyne Club).

had been bred in an aversion to Episcopacy, and for long (according to Sir George Mackenzie) the Presbyterians were devoted to him, and "believed that he was advancing their interests, even when he seemed to persecute them." The indulgent view given of this astute minister in the "Memorialls" of the Rev. Robert Law, a Presbyterian clergyman, is entirely in accordance with this observation of Mackenzie:* "April 1674" (Mr Law chronicles), "the Duke of Lauderdale, his Majesty's commissioner, takes journey from Edinburgh to London, notwithstanding any bill of the English Parliament to the contrary, and is graciously welcomed by the king's Majesty. Before he went, he told his noble friends he was not afraid of any bogles by the way, it being surmised before that some would seek his hurt by the way. He was truly a man of a great spirit, great parts, great wit, a most daring man, and a man of great success, and did more without the sword than Oliver Cromwell, the great usurper, did with it; was a man very national, and truly the honour of our Scots nation for wit and parts."

In consistency with Stair's own desire for a milder administration in the criminal court, we find him, in the beginning of 1673, pressing upon Lauderdale the appointment of the Earl of Kincardine to be Lord Justice-General—an office then vacant, which would have put Kincardine at the head of the criminal or Justiciary Court.†

* Sir G. Mackenzie's Memoirs of the Affairs of Scotland, p. 156; Law's Memorials, p. 65.

† Lord Kincardine's character is very favourably drawn by Bishop Burnet, who says that "he had a noble zeal for justice, in which even friendship could never bias him."—History, i. 146.

"EDINBURGH, *Jan.* 6, 1673.

". . . I have been very free with my Lord Kincardine as to his aversion to be Justice-General. It came to be known, and was very acceptable here, that a person of so equal and just a disposition should be entrusted with the greatest concerns of the people, and who, by his other employments in his Majesty's service, doth constantly attend in session time, and is always near, and would bring that Court [of Justiciary] to a very good posture.* I am very confident that if your Grace insist to move him again, he will be satisfied, and will overcome any aversion he had. I know my Lord Hatton has moved to your Grace for a favour to my son-in-law. It would be very convenient, if your Grace please. I shall be loath to be a frequent suitor in such matters, and shall think myself happy enough that you allow me to be, my Lord, your Grace's most faithful servant."†

If Lord Kincardine ever received the offer of the place of Lord Justice-General, it was not accepted by him. The decided voice he gave as a member of the Privy Council in favour of moderate measures, and of a milder course of proceeding against the Presbyterian nonconformists, rendered him unacceptable to the Primate and his friends, and at last also to Lauderdale and the king; and occasion was

* Lord Kincardine was at this time an Extraordinary Lord of Session.

† Laing MSS. The first part of this letter (which is not given) refers to a business transaction in which the Lords of Session were concerned, involving the purchase of the feu-duties of certain abbacies as a profitable investment of a sum of money then in their hands. The son-in-law for whom a favour is gently requested at the close of the letter was probably Charles Lord Crighton, eldest surviving son of the Earl of Dumfries, who had married Stair's third daughter, Sarah Dalrymple.

taken, a few years after the date of this letter, to turn Kincardine, as well as the Duke of Hamilton, out of the Council, as enemies of the Church and favourers of conventicles.*

It must be admitted that President Stair, like most of the public men of that day, went to a considerable extent with the times, and gave more or less of moral support to a Government whose action in various respects he could not approve of, by continuing for ten years in the important office he held. His best defence is that he never lent himself, as others did, to be an instrument for the oppression of his fellow-subjects, and was never unscrupulously compliant; and when, during the government of the Duke of York in Scotland, towards the end of the reign of Charles, matters were brought to a still worse pass than they had been, he then took up a position so conflicting with Government as to make him extremely obnoxious to the ruling powers, and ultimately drive him into exile.

Lord Stair's proper sphere of action was the civil bench. On becoming president, he entered upon the discharge of duties and functions for which his talents and temperament peculiarly fitted him. With exemplary diligence he framed day by day, with his own hand, an abbreviate of the decisions of the court as they were pronounced. From what is known of the assistance he gave in framing particular Acts passed in the reign of Charles II., we may infer that his advice and aid were taken in reference to most, if not all of the measures for the improvement of the law which appear in the statute-book while he was president of the court.

* Burnet's History, ii. 158.

During the ten years following his appointment he composed the first draft of the 'Institutions of the Law of Scotland.' This excellent work, upon which Stair's fame as a lawyer principally rests, was originally intended for his own particular use, "that he might the more clear and determine his judgment in the matter of justice."*

That the law which was applied to the facts of cases coming before his court was sound, the highest authorities of the past and the present time equally admit. He appears at the same time to have studied (perhaps not always with success) to carry the opinion of the public, as well as of the litigants, along with him. And in those unruly times, when a suitor cast in his cause occasionally had recourse to a pistol-shot to avenge his want of success, it is no disparagement to the president that he took pains to show that the decrees of his court were well founded; "which softening plaister" (in the quaint language of Lord Fountainhall) "he uses in any other controverted interlocutors, knowing that many watch for their halting."†

The combined influence of the president's authority and his law was usually, but not always, paramount in his court.‡ The insinuations of Bishop Burnet and

* Advertisement to edition 1693. In the dedication of the first edition of 1681 to the king, Lord Stair says that "his modesty did not permit him to publish it previously, lest it should be judicially cited where he sat."

† Historical Notices. Sir John Lauder of Fountainhall was a contemporary of Stair, and a judge in the Court of Session both before and after the Revolution.

‡ In his Memoirs of the Affairs of Scotland, Sir George Mackenzie refers to a law process between the Scottish Chancellor (Rothes) and Lord Melvill, in which Lauderdale's brother, Lord Hatton, then an ordinary Lord of Session, had "owned the Chancellor publicly," though Lauderdale had recommended Melvill to his friends with all

others that Lord Stair was a perverter of justice in his judicial career, rests upon no foundation of evidence; and no single instance has been alleged, and of course none proved, of any judicial malversation on his part as a judge.*

In the question that occurred in 1674 of allowing appeals to Parliament from decisions of the Session, whatever may have been his own opinion, and we may presume it was against the right of appeal, there seems to be no ground for inferring that he encouraged the harsh proceedings adopted by the Government and the Privy Council at the commencement of the dispute, with the view of debarring the Scottish advocates who were in favour of appeals from exercising their functions as barristers, and banishing them from Edinburgh and the courts of law.† Upon this occasion a large proportion of the members of the bar, including Sir George Lockhart, afterwards president, and his rival, Sir George Mackenzie, "seceded" for

the latitude that custom would allow. "This process" (Sir George continues), "also did much alienate Hatton from the president of the Session, who found that Hatton was able to sway the Session," &c.

* Referring, in his Apology, to the judicial persecution he was subjected to in the last years of Charles II.,—"No man" (Lord Stair says) "was found to witness the least malversation or baseness by indirect interest in any cause, by taking any bribe or reward, by partiality or insolency, though nothing would have been more acceptable to the court than, by one blow against my fortune and fame, to have ruined me upon malversation of my trust as a judge."

In defect of substantial evidence, even the title of Stair's tract, "Apology for Sir James Dalrymple," has been used as an argument against him on the view, *Qui s'excuse s'accuse;* but any one conversant with the practice of English writers will be aware that "Apology" is used with the signification of "defence" or "vindication," as well as of "excuse."

† In the "Apology" Stair asserts that he was in the country in vacation time when the Privy Council's letter, which caused the secession for upwards of a year of the principal members of the bar, was issued.

a considerable time; ultimately, however, yielding to the Government and returning to their practice.*

The two letters that follow from President Stair to the Duke of Lauderdale (of an interest more local than general) relate to these proceedings.†

To his Grace the Duke of Lauderdale.

"May it please your Grace,—There is sent herewith a letter from the Session to his Majesty, with another to your Grace, which are so clear that I need not give you the trouble of saying any further of the matters therein contained. Some of our number were not frank for letters of this strain at this time, yet did sign them. The Chancellor was not with us when we concluded, and would not sign. Sir George Mackenzie has done himself and us all a great deal of right, and is fully resolute against all such courses. He knows, and could show, more of all these late courses than any other. All your friends did assure

* In Sir George Mackenzie's Memoirs, and in Brunton and Haig's College of Justice, *voce* "Sir George Lockhart," a full account is given of these proceedings. The *Mons Sacer* of this secession was the town of Haddington.

"The banishment by the Council of the greatest part of the advocates from Edinburgh, without a process," was included in the list of grievances presented by the Scottish Convention of Estates after the Revolution.—Act. Parl. Scot., ix.

This right of appeal from the Court of Session to the Scottish Parliament, although clearly competent under the Revolution Settlement, was not much encouraged or practised prior to the Union in 1707. Appeals were then introduced as a part of judicial procedure, and were taken from Scotland to the British Parliament—Reports then commencing of the adjudications in Scottish cases. This system of appeal, though presenting startling anomalies, has been productive of great practical benefit to the law and the courts of Scotland.

† The letters in question (Laing MSS.) are undated, but in Lord Stair's hand, and must have been written in the end of 1674 or the beginning of 1675.

him that none [of the advocates] would be admitted on easier terms; and the only way to put a period to these courses is, that on his Majesty's return a period be set of admitting or transmitting petitions to his Majesty some time in this session, and that they be only admitted that are of the same terms with those signed by Sir George and his brother Mr Colin. The first relates to those who were excluded upon accompt of their appeals, the other upon accompt of withdrawing factiously from the House [Court]. Mr Colin's was given in after his brother's, and I was ordered to transmit it to your Grace with three other petitions which were allowed last session; but because these persons had signed the address to the [Privy] Council, though they had given order to expunge their names by letters to the clerks of the Council, the Lords forbear to send them till the issue of that address. And now his Majesty having discharged the process raised upon the address, the Lords ordered me to send them to your Grace. It was the unanimous opinion of your friends that there was a necessity to bring this matter to a final close without further expectation, which keeps all these outed advocates from coming in, and holds them busy about other matters than their proper employments, and keeps off people from following their suits at law; for they are deluded with different expectations every post; and therefore his Majesty's pleasure would both be signified at the Court, that those who are there may have notice of it, and likeways here."

"May it please your Grace, — I received your Grace's letter of the 23d inst. yesterday, expressing

your signal affection to and care for the Session. That which I did by my last signify at the desire of your friends on the Session of the rumours here did flow from our freedom with your Grace, to show you the lying rumours which were industriously spread to amuse people from insisting in their suits in the Session; on which accompt it was put in the News-letter which ordinarly comes here, that all the outed advocates were to come in, which I believe was e'er they made any application to your Grace. But it was far from obtaining belief amongst your friends that there would be any alteration in that which the king, by his last letter to the Session, had declared to be his final determination in that whole affair; nor do I know any difference in any of your friends, and for myself I know yourself and your way better than to be capable of any such impression. I thank God there is nothing more alien from my nature than jealousy or suspicion."

It is worthy of mention as an instance of regard for Lord Stair on the part of the Town Council of Edinburgh, that in December 1676, "taking into consideration the many great and signal services done to the city by Sir James Dalrymple, President of the Session," the Council not only ordered his house-rent to be paid by the town during his life, but likewise that of all his successors in office.*

He was in the course of the same year sent for by the king, probably by request of Lauderdale, to assist

* This act of the Town Council continued in force till 1741, when the privilege conferred by it was relinquished by President Duncan Forbes.

in composing some differences that had arisen in the Scottish Administration; upon which occasion he is said to have been offered, and to have declined, the situation of Chancellor, which would have brought him more in contact with the political action of the Government.*

* Impartial Account of Transactions in Scotland.

CHAPTER VII.

Arrival of the Duke of York in Scotland as Royal Commissioner—President Stair takes up a position antagonistic to the Government—The Test Oath—He is deprived of his office without cause shown—Retires to the country, and is annoyed with a judicial persecution—Goes into exile—Publication of his Institutions of Scottish Law—His occupation at Leyden—Physiologia Nova Experimentalis—Views of the Prince of Orange—Sir James Dalrymple accompanies the Prince to England.

Upon the arrival of the Duke of York in November 1679 to take up his residence at Holyrood House, as Royal Commissioner in Scotland, Lord Stair, alleging an unwillingness to adjourn the business of the court, declined to go in procession with the judges to meet the Duke on the road to Edinburgh—a mark of deference and attention which was paid to him by a numerous company of the nobility and gentry upon the day of his arrival. On the following day the president presented himself at Holyrood, and congratulated his Royal Highness, whose Roman Catholic proclivities were generally known, in a speech containing this expression of sentiment: "It is matter of great joy to this nation to see one of the royal family among them, after being deprived for so many years of that honour; and the nation being

entirely Protestant, it is the fittest place in which your Royal Highness could have your recess at this time." * The hint given in so unqualified a manner of the reception which the Roman Catholic Duke was likely to receive in Scotland was sufficiently intelligible; and the policy soon after initiated by the Government showed that some such warning, whatever its effect, was neither out of place nor ill-timed.

The president's demeanour on this occasion, and the independent position of moderation he now assumed at the Privy Council Board, were decidedly unacceptable at the ducal court. He now lost also the support of the Duke of Lauderdale, with whom, as well as with his Duchess † (formerly Countess of Dysart), the Stair family had been always upon terms of friendship and alliance; the president and his lady being amongst the few friends whom the Duchess's violent temper did not alienate from her husband during the last years of his life.

The Duke of York's previous dislike to Lauderdale had lately been roused into hatred on account of

* Brunton and Haig's College of Justice, p. 368; Apology.

† The Duchess of Lauderdale, Countess of Dysart in her own right, to whom Lord Lauderdale had been married about ten years before, soon after the death of his first wife, was in every way a remarkable person. She was not only possessed of the attraction of beauty, but was distinguished by great talents and accomplishments, though violent in temper, and of a rapacious disposition. In her business habits she was decidedly a "strong-minded woman," taking charge of her husband's estates, docketing and noting his correspondence, and guiding his disposal of places and pensions. Among the original MS. letters of Lord Stair, now in possession of Mr D. Laing, there is one addressed to her Grace on the subject of an adjustment of her husband's claims against the estate of Caithness, couched in a style evidencing the writer's perfect knowledge of the business talents of his fair correspondent,—June 4, 1673.

the vote he had given as a peer of England against the Roman Catholic Lord Stafford, and he eagerly seconded the efforts of those who sought to break down entirely Lauderdale's influence with the king. These efforts were at last successful, and the once all-powerful minister, decaying in bodily strength, and deprived of his high posts, was fain to retire altogether from public life. With the loss of his power his health gave way, and he died at Tunbridge Wells in the autumn of 1682.*

As High Commissioner in Scotland, the Duke presided both in the Parliament and the Privy Council, and was armed with nearly unlimited powers. During the parliamentary session of 1681, President Stair sat in Parliament as member for the county of Wigton, which was at that period not incompatible with his office of judge. He was also on the Committee of Articles, whose part it was to discuss and prepare the measures to be brought before the House. He was in this way, as well as being a member of the Privy Council, brought face to face with the Duke and his ministers in the important debates which were immediately raised as to the terms of the new oath or test proposed to be tendered to all persons in public trust. This was ostensibly intended as a security to the Protestant religion after the Act of

* Until the arrival in Scotland of the Duke of York, Lauderdale kept his ground with Charles II. against all attacks. Attempts were several times made by the Duke of Hamilton and other Scotush peers to discredit him with the king, and even to have him impeached for his tyrannical conduct to all classes of men, as well as to what was called the fanatical party; but these remonstrances were discountenanced by Charles, who regarded Lauderdale as unalterably attached to his interest.—Somers's Tracts, vol. viii.; Lauderdale Papers in the British Museum; Hume's England, chap. lxvi.

Parliament had been passed providing for the Duke of York's succession to the throne.

The first draft of the oath,* besides clauses as to the royal supremacy and allegiance, contained a clause as to non-resistance, and declared the national Covenants unlawful and of no obligation. By Stair's influence and management, a new clause, overriding the whole of the oath, was introduced at its commencement, whereby every person in public trust was bound to swear that he owned and sincerely professed the true Protestant religion contained in the Confession of Faith of 1567, and disowned and renounced all such principles and practices, whether Popish or fanatical, which were contrary to and inconsistent with the said Protestant religion and Confession of Faith.†

This clause virtually nullified the intention of the Government, and rendered the test in several particulars inconsistent with itself. The Duke of York is said to have remarked on the night it passed, that "Stair had ruined all honest men" (that is, all who were favourable to the Duke's own views) "by bringing in the Confession of Faith." The president himself declined to subscribe the oath—a very significant commentary on the piece of work he had assisted in framing; and it might have been well for his friend the Earl of Argyle if his lordship had taken the same course.

On going to London soon afterwards to state his

* The Test Oath, as ultimately passed into law (1681, c. 6), is given in the Appendix to this chapter.

† The Confession of Faith of 1567 had been of late years almost lost sight of, and had been displaced to a great degree in the minds of the people by the Westminster Confession of 1649.

scruples to the king, and possibly tender his resignation, Sir James Dalrymple found that a new commission of lords of Session had been issued under the Great Seal, omitting himself and three other judges without cause shown, and appointing four new judges, Sir George Gordon of Haddo to be president. The judges and most of the advocates formally signed the Test on the 1st November 1681.*

Matters having taken this serious turn, the ex-president, with his lady and their youngest son (afterwards Sir David Dalrymple of Hailes), retired to the country, where they lived for some time in strict seclusion.

The Scottish Administration, with persevering vindictiveness, now commenced against him a course of *quasi* legal persecution, which in his 'Apology' is thus referred to: "That quarrel [as to the Test], and my freedom to the then duke at his first coming to Scotland, against attempting to weaken the Protestant interest, in a public speech I had at his entry, made me to be the first person laid aside that was looked after. I was cited before the criminal judges, before the Council, before the Parliament; and hundreds of examinations and re-examinations were taken against me, even of my most intimate domestic servants and my sisters-in-law, not in the regular way of probation but by way of inquisition, to found a process upon any special matter, which was never done, because nothing was found against law."

The only proceeding against him which seemed likely to be pressed was a vague charge of harbouring and resetting (as it was called) rebellious Cove-

* Fountainhall, Historical Notices.

nanters upon his estate. Although this unseemly persecution was not carried to any serious extent, Sir James Dalrymple was much harassed by it; and at last, upon receiving private advice from the Lord Advocate, Sir George Mackenzie (on this occasion more lenient than his masters of the Privy Council), that he could no longer insure his safety and freedom from imprisonment, Sir James privately withdrew himself to Holland in October 1682, and took up his residence at Leyden.

A similar persecution was continued in his absence against his wife and his tenants. The latter were fined for nonconformity. The Lady Stair (as she was in Scottish fashion called) was cited before the Privy Council in the spring of 1683 upon a charge of absenting herself from church and frequenting conventicles—a proceeding which must, in no slight degree, have ruffled her haughty spirit. In her case the charge was well founded in fact, for she regarded conventicles with especial favour, and was in the practice of entertaining silenced preachers in her house.* She entered appearance in court, and, admitting the charge, promised to live orderly and regularly in time coming, desiring that her bygone faults in absenting herself from church and being present at conventicles might be passed from. No further proceeding against Lady Stair took place.

Mention must not be omitted of the publication at Edinburgh in his absence, in 1681, of Stair's great work, the 'Institutions of the Law of Scotland.'† In

* Fountainhall, Historical Notices, i. 426; Law's Memorials, 227, note; Impartial Account of Transactions in Scotland.

† "The Institutions of the Law of Scotland, deduced from its origi-

this, the earliest digest, and (if we except the treatise of Sir Thomas Craig on the feudal law) the first systematic book of Scottish law, the author deduces, with accurate and precise logic, the various parts of the body of law he is illustrating from original principles of the law of nature, comparing the Scottish with the divine law and the laws of other nations. Giving due weight to precedent, he tests it by the standard of reason. This work is more systematic, and deals more with principle, than perhaps any other book on municipal law, being in reality as much a treatise on general jurisprudence, illustrated by reference to the law of Scotland, as a technical digest of law.*

The society into which Sir James Dalrymple was

nals, and collated with the Civil, Canon, and Feudal Laws, and with the Customs of neighbouring Nations. By Sir James Dalrymple of Stair, President of the Session."

* Stair's Institutions are still of high authority in questions involving the principles of obligations and contracts, and also in questions of feudal tenure and real right, although it must be admitted that in his deductions of the origin of legal forms and writs the author shows himself less acquainted with the historical foundations of the law of Scotland than subsequent inquirers who have had more access to early historical records.

In the second edition of 1693, which refers to many additional statutes, acts of sederunt, and decisions, the Institutions assume their permanent form. Of the four Books into which they are divided, the first relates to original personal rights, the second to original real rights, the third to the conveyance of both, and the fourth treats of the actions and legal process by which rights are made effectual.

Soon after the Institutions, two volumes of Decisions of the Session, from 1661 to 1681, collected by Lord Stair, were published at Edinburgh. In the dedication to the Chancellor and Judges, he expresses confidence that the Decisions will serve for illustration and vindication of their justice and faithfulness in their service to the king and kingdom, in that the judges, in so long a tract of time, have kept so steady and equal a course in the administration of justice, with so little variation.

thrown in Holland consisted chiefly of refugees from Scotland, of whom the principal were Archibald Earl of Argyle, Lord Melvill and his second son the Earl of Leven (who had succeeded to this title on the death of his cousin), Sir Patrick Hume of Polwarth, the Earl of Loudoun, the Stewarts of Coltness, and the Rev. Mr Carstairs, most of whom became well known after the Revolution. He had also residing with him his youngest son and his grandson, John Dalrymple (afterwards second Earl of Stair), for the sake of their education. I am not aware of any contemporary notice of the presence of his wife in Holland, although it is nearly certain she must have joined him at Leyden. Mention is more than once made of the regularity of Sir James Dalrymple's observance of domestic worship and family prayers in his house;* and he would probably be assisted in his devotions by Dame Margaret Dalrymple, whose reading of the Bible in her earlier life has been already remarked, and who had liberty in Holland, where there were no conventicles, to have as many religious meetings as she desired.

Sir James's residence at Leyden, and the leisure he enjoyed, afforded an opportunity for his active mind to engage in philosophical pursuits of a nature different from those of his earlier life. His work on natural science, entitled 'Physiologia nova experimentalis,'† was brought out at Leyden in the begin-

* Forbes's Journal, Introduction; Impartial Account of Transactions in Scotland.

† 'Physiologia Nova Experimentalis, in quâ generales notiones Aristotelis, Epicuri et Cartesii supplentur, errores deteguntur et emendantur, &c., ex evidentibus principiis quæ nemo antehac perspexit et prosecutus est. Authore D. de Stair, Carolo Secundo, Britanniarum

ning of the year 1686, which was the year immediately preceding the publication in England of Newton's 'Principia.'

Colin Maclaurin, in his account of Sir Isaac Newton's Philosophical Discoveries, refers to the latter half of the seventeenth century as "the happy era of experimental philosophy, when men, having gotten into the right path, prosecuted useful knowledge; . . . when not private men only, but societies of men, with united zeal, ingenuity, and industry, prosecuted their inquiries into the secrets of nature, devoted to no sect or system." But he goes on to say that at this very time also an illusive scheme of speculative philosophy prevailed amongst many, and, by misleading ingenious men, corrupted their notions and retarded their progress. "Nature did not unveil herself readily enough to satisfy the impatience of some men, who could not be contented with those views of her which time and industry produced to them. Therefore they hearkened again to the vain promises of those who pretended to unravel all her

Regi a consiliis, juris et status, nuper latinitate donata. Lugduni Batav. 1686.' It would seem from this somewhat confident title-page that the Physiologia had been first written in English and then translated into Latin. Printed in a small quarto form, it is dedicated to the Royal Society of London, and consists of twenty-one *Explorationes* or chapters on the following subjects: 1. De Communibus Principiis naturalibus; 2. De Materia ejusque unione et corporum constitutione; 3. De Motu et Quiete; 4. De Æthere et Phænominis Cœlestibus; 5. De Gravitate et Levitate; 6. De Igne; 7. De Luce; 8. De Calore et Frigore; 9. De Aqua; 10. De Mari; 11. De Fontibus et Fluminibus; 12. De Oleo; 13. De Sale; 14. De Fermentatione; 15. De Corrosione et Metallorum Solutione; 16. De Fixatione et Congelatione; 17. De Spiritibus Specificis; 18. De Corpusculis terrestribus, ubi de Effluviis magneticis et Planctarum seminibus (?); 19. De Aere et Atmosphæra; 20. De Vacuo; 21. De communibus qualitatibus materialibus.

mysteries at once by the force of their abstracted speculations."* To such speculative natural philosophers the character of his work leads one to believe that the learned author of the Physiologia belonged. It may be regarded as an ingenious speculation, proceeding, for the most part, on mistaken views of natural science, more particularly in its theory of the system of the earth and the heavenly bodies. Rejecting the theory of Copernicus, the truth of which had been already maintained by Kepler and Galileo,† and was on the eve of being conclusively demonstrated by Newton, Sir James Dalrymple endeavours to show that the earth is the centre of the system of the universe, round which the sun ("nobilissimum astrum") and the other stars move in their courses.‡ His theories of other subjects of natural philosophy handled in the Physiologia are found to be also defective, when viewed by the light of subsequent discoveries in science.§

* 8vo edition, London, 1750, p. 95.

† The reader will recollect Galileo's involuntary and honest protest against his enforced abjuration, in 1633, of the theory of the earth's motion—"E pur si muove!"

‡ Physiologia—Exploratio quarta de Cœlo, p. 138.

§ The 'Physiologia nova experimentalis' must have been communicated to Bayle, then Professor of Philosophy at Rotterdam, and editor of the 'Nouvelles de la République des Lettres,' prior to the date of its publication at Leyden, stated on the title-page to be 1686. The 'Nouvelles' came out at Amsterdam in monthly numbers. In the number for December 1685 appeared a notice of Stair's work. This notice, which is upon the whole favourable, commences: "Cet auteur que, après avoir exercé glorieusement de belles charges en Ecosse, sa patrie, est venu resider à Leyde pour philosopher plus tranquillement, ne s'attache à aucune secte de philosophie, mais prenant des principales ce qu'il y trouve de meilleur, il y joint ses propres pensées, et se fait de tout cela une méthode d'expliquer les phénomènes de la nature." Bayle then gives an analysis of some of the dissertations. When he comes to the fourth, in which the systems of Ptolemy, Tycho Brahe,

While Lord Stair was employing his leisure time at Leyden in literary pursuits, the Scottish Administration were by no means disposed to lose sight of him and his fellow-exiles. With a view to forfeitures of their landed estates, indictments for treason upon very slight foundation were raised in their absence, early in the year 1685, against Lord Melvill, the Earl of Loudoun, and Sir James Dalrymple.* The death of Charles II., and the accession of James II. in Febru-

and Copernicus are observed upon, and another is proposed, Bayle gives no opinion upon its merits, but refers the reader to the original;—"Et nous nous contentons de remarquer quant à cet article que selon ses hypothèses l'auteur donne des explications fort curieuses des apparences des astres!" The criticism by the great Encyclopediste, taken altogether, is more cautious than satisfactory.

I may be permitted to quote the following letter to myself from Professor Kelland (of the mathematical chair in the University of Edinburgh), with reference to the view taken in the text of Stair's Physiologia :—

"20 CLARENDON CRESCENT, *Feb.* 15, 1873.

"MY DEAR SIR,—I have looked over parts of Stair's Physiologia with some care, and have read your remarks on the same. When you state that his philosophy is *defective* when viewed by the light of subsequent discoveries, you do Stair more than justice. Even when viewed by the light of the existing knowledge (a year before the appearance of the 'Principia'), his speculations are, so far as I can see, in a retrograde direction ; such, for example, as his criticisms of Descartes on Motion, and the like. He appears to me to fail to perceive the extent to which science had advanced at his time, and to have had no just appreciation of Descartes and others.—I am, &c., PHILIP KELLAND."

* Trial for treason, in absence of the accused, was no part of the customary law of Scotland, but was introduced in the reign of Charles II., and made competent by the statute 1669, c. 11. This statute remained in force till the Union. The trial of a traitor after death, as in the case to be immediately mentioned in the text of the Duke of Monmouth and Buccleugh, whose heirs were cited to appear, was alleged to be in conformity with the common law of Scotland, as founded upon the civil or Roman law. After the Union, and the introduction into Scotland of the English law of treason, recourse to Parliament for an Act of Attainder was the constitutional remedy in the case of known or alleged traitors who had escaped to foreign parts. See Hume on Crimes, i. 538.

ary of that year, were followed in the course of a few months by Argyle's invasion of Scotland and Monmouth's rebellion in England, and by the speedy suppression of both. These outbreaks furnished new materials for indictments on the head of treason.

In Scotland, a prosecution for high treason and rebellion of a complex character was instituted before the Court of Justiciary by the King's Advocate, Sir George Mackenzie, against the deceased Duke of Monmouth, indicted as Duke of Buccleugh, the widowed Duchess of Buccleugh, and their two sons, and against Sir James Dalrymple of Stair and Andrew Fletcher of Saltoun.* The charge, as against Sir James, was an alleged complicity with Argyle's invasion by a contribution of money, coupled with the old offence of harbouring rebels upon his estate. No proceedings, however, took place upon this charge of the indictment, the diet being continued against him from time to time, while sentence of forfeiture was passed against Fletcher of Saltoun, and his estate gifted to another. At last, after successive prorogations, by a most unexpected turn of affairs, a remission of all charges whatever against Sir James and the members of his family was granted by the Government in the spring of 1687.† The cause of this sudden change requires explanation.

The power of dispensing at discretion with the Test and penal laws in the case of nonconformists, as well Protestant as Roman Catholic, had long been a

* Howell's State Trials, ix., where the whole proceedings are given from the Justiciary Records.

† Fountainhall, Historical Notices, ii. 687 *et seq.*; State Trials, xi. 1067.

favourite project with the king. When strengthened by the failure of two rebellions, he set about putting in action the power of dispensation he claimed. But to this the feeling of the country and of many of his staunchest adherents was decidedly opposed. The Scottish Lord Advocate, Sir George Mackenzie, who had driven long and unweariedly in the harness of the Government, turned fairly round upon his master, refusing to countenance the power claimed, and was deprived of his office. Sir John Dalrymple, Stair's eldest son, who had already distinguished himself at the bar, and had been subjected to some of the persecution to which his family had been exposed, was less scrupulous or more liberal and latitudinarian in his principles, and was made King's Advocate in Mackenzie's stead. This change took place early in 1687, and the first use he made of his newly-acquired influence was to obtain for his father and relatives the remission or pardon which has just been mentioned.

This remission of his alleged crimes and misdemeanours was communicated in Holland to Sir James Dalrymple, who took no notice of it, and prudently remained where he was. He justly enough considered himself to have committed no crime which required a pardon; * and he was probably aware of the animus

* Without committing himself by overt acts, Sir James was probably cognisant of the attempts against the Government, following upon the Rye House Plot in 1683, which were put in execution after the Duke of York's accession to the throne. The Rev. William Carstairs, when brought before the Secret Committee of the Scottish Privy Council in 1684, and tortured with the thumbikins, confessed to there having been "a current plot in Scotland" for a considerable time, and that some were for raising forces, and others for joining with the English for the preservation of the Protestant religion, and to prevent the Duke from

which dictated the efforts made by King James in the previous year to have the political refugees expelled from the United Provinces. The king had written in pressing terms to his son-in-law the Prince of Orange,—"So long as those rebellious people are permitted to stay there, they will have opportunities of corresponding with the disaffected here, and stirring them up to sedition; whereas, if they were driven out of the Seven Provinces, they could not be so dangerous." The States-General were more inclined to be complaisant in regard to this request than the Prince, whose humane policy happily prevailed.* Although his estate may have had the advantage of his son's acceptance of office, there is no ground for supposing that Stair approved of Sir John Dalrymple's views, more compliant in the matter of religious tests than his own, upon the question of the dispensing power.† He would probably be consulted on the subject, with reference to Scotland, by the Pensionary Fagel, to whom he was well known as a resident in Holland under the protection of the States; and we find that in December 1687, Fagel's answer to a letter of James, desiring approval by the Prince and Princess of Orange of the indulgence to dissenters, and the dispensing with the penal laws, states very decidedly that their Royal Highnesses are for toleration to the

coming to the throne; "mentioning among others, in the knowledge of such a plot, Sir James Dalrymple of Stair, who was then safe in Holland."—Fount., Hist. Notices, ii. 555; Act. Parl. Scot., ix. 192.

* Dalrymple's Memoirs of Great Britain and Ireland, ii. 54.

† "During some months," says Lord Macaulay, in his antithetical manner, "Sir John, at Edinburgh, affected to condemn the disloyalty of his unhappy parent, Sir James; and Sir James, at Leyden, told his Puritan friends how deeply he lamented the wicked compliances of his unhappy child, Sir John."

dissenters, and not for pressing consciences, but can never approve of taking away the tests, or admitting Papists to be members of Parliament, or in judicatories, or in the Church, that seclusion being the great security of the Protestant religion.*

Some time before the Prince of Orange (soon to become William III.) left the Hague with the intention of making a landing in England, Bishop Burnet mentions that his Highness had become acquainted, through the Pensionary Fagel, with Sir James Dalrymple. Being informed, in an interview with William, of the great design in prospect, Sir James is said to have inquired what was the Prince's true intention in entering upon this expedition. The Prince answering that it was for the glory of God, and for securing and establishing the Protestant religion, the tradition is that the old man pulled off his wig, saying, "Though I be now in the seventieth year of my age, I am willing to venture this (pointing to his head), my own and my children's fortunes, in such an undertaking."

He fulfilled his engagement by accompanying the Prince in the fleet, of which the retarded sailings and ultimate landing at Torbay have been so often described. On landing in the bay, William sent to inquire concerning Sir James Dalrymple's health; and perceiving that horses were not come up for him, ordered a Neapolitan horse, belonging to himself, to be assigned for his use.†

* Dalrymple's Memoirs of Great Britain and Ireland.

† Forbes's Journal.

CHAPTER VIII.

Sir James Dalrymple principal adviser in Scottish affairs at the time of the Revolution — Convention of Estates — Letters to Lord Melvill—Murder of President Sir G. Lockhart—Stormy proceedings of the Convention Parliament—Opposition to the Dalrymples by the "Club"—Sir James Dalrymple reappointed President of the Session—Constitutional questions as to judicial appointments —President Stair attacked in a pamphlet by Ferguson the Plotter and Sir James Montgomery—Vindicates himself in his 'Apology' —A Jacobite plot.

The Revolution of 1688, which the matured conviction of a great majority of the nation in favour of Protestantism and civil liberty rendered almost a necessity, having made its comparatively peaceful and bloodless commencement in England, Scotland followed suit, though not with an equal degree of unanimity. While the Convention Parliament were in Westminster declaring the throne to be vacant by the *abdication* of King James, and providing for the proclamation in February 1689 of William and Mary as King and Queen of England, measures were being taken during the winter for securing a majority in their favour in the Scottish Convention of Estates, which was to meet in the spring. It was provided by the instructions issued for calling the Convention, in the framing of which Sir James Dalrymple is said

to have had a principal part, that none but Papists should be excluded from voting at the elections, and that the commissioners for the burghs should be chosen by a poll of freemen, and not by the town councils as recently new-modelled in most of the royal burghs.

In the affairs of Scotland generally at this juncture, King William's Government, in which the king himself took the lead, acted chiefly upon the advice of Sir James Dalrymple.* From long training and experience in business, a thorough knowledge of men and parties, and the sagacity of his counsels, he had been of no inconsiderable figure among the British refugees and adherents of the Prince of Orange prior to the Revolution. And after that event these qualities recommended him as a safe adviser to the king, although reports of the unacceptableness of the Dalrymple family to many of his subjects in Scotland, must even then have reached the royal ear.† He was trusted also by Lord Melvill and others in William's confidence, who had been like himself refugees in Holland; while his calm unimpassioned temperament, and his tolerant and forbearing spirit, would further recommend him to a prince who was in these respects similarly constituted. Influenced probably by such considerations, King William resolved to rely upon the advice of Sir James Dalrymple, and he continued to trust him through good report and bad report.

When the Scottish Convention of Estates met in March 1689, under the presidency of the Duke of

* Douglas's Peerage, by Wood; Macaulay's England, iii. 263.

† Bishop Burnet's History of his own Time.

Hamilton as Royal Commissioner, Sir James was residing in the immediate vicinity of London, at the Duchess of Lauderdale's beautiful villa of Ham, on the banks of the Thames. He was in frequent communication with the king, whose favourite residences were Hampton Court and Kensington Palace. Lord Melvill, a Presbyterian nobleman, whose leanings in favour of his own party were tempered by prudence and a fair regard for other interests, had been sent down to Scotland, after his arrival from Holland, as William's vicegerent. He held at first no responsible appointment, but had special instructions to attend the Convention of Estates, of which he was himself a member, and discharge the duties of provisional Secretary of State and manager for the new Government.* His second son, the Earl of Leven, who had raised a regiment for King William, had the special mark of favour conferred upon him of presenting the royal letter to the Convention.

Sir John Dalrymple meanwhile had declared himself in favour of the new order of things, and with his ready eloquence and powers of reasoning took a leading part, generally, though not always, in accord with the views of his father, in the debates that followed.

With these friends and connections in the Convention, and trusted by the king, one may be justified in supposing that Sir James Dalrymple's hand, though not always seen, aided materially in guiding the springs put in operation whether to promote or to keep down movement at that critical juncture.

* Leven and Melvill Papers (Bannatyne Club), Nos. 1 and 2. These papers will be referred to as the "Melvill Papers," but not largely quoted from, as being already in print.

The debates and votes of the Convention of Estates were indeed marked by an amount of freedom of speech and boldness of purpose such as had not been witnessed for a century in the Scottish Parliament. It required all the wisdom and temperate courage of the new king (not very well seconded by his Commissioner, the Duke of Hamilton), and all the prudent caution of Melvill, and all the sagacity of Sir James Dalrymple, and all the debating powers of his versatile son, to prevent this assembly from causing a general confusion, and upsetting the very Government which a majority of its members had concurred to establish.

In March, we find Sir James writing to Lord Melvill: *—

"London, *March* 23, 1689.

"My dear Lord,—I am sorry for the bad weather you have had. I was not out of the house a day since I parted with you, by reason of a pain in my back that oft troubles me, whereby I was not able to promote my Lord Leven's affairs. Mr Carstairs endeavoured what he could, but by the throng of business could not get meeting with the king or with Mr Bentinck.† I went yesterday to Hampton Court, and spoke with both at length. I got an order for the regiment [Leven's] to march by Chester, and there to be provided in a ship to Kirkcudbright.‡

* Melvill Papers, No. 3.

† The Rev. William Carstairs, after his experience of the thumbikins in 1684, had sought refuge in Holland; and being now restored to his country, was much in King William's confidence. His subsequent influence with the king and queen in matters relating to Scotland, especially ecclesiastical, is well known.

‡ Lord Leven had in the previous year, under a commission from

. . . It were fit some better-tempered and qualified person were sent hither [from the Convention] than was sent down. Bearers may carry false reports that none would adventure to write. The assistance the late king [James II.] hath gotten from France is nothing like what was said before. I have dealt with the king that the Parliament might send a message to the Convention to raise 10,000 men in Scotland on their [the English Parliament's] charges and pay, which, with these already sent, might be the nearest way to relieve our friends in Ireland—at least, to save invasion of Britain, which will certainly be in Scotland rather than in England. And new-raised English from their soft beds will neither be proper in Scotland nor so fit anywhere as our hard-bred people. . . ."

In the course of a few days he writes again :—

". . . If alteration is to be made in the Church, it will be great unkindness to the king to have it after that he is proclaimed; for then it must have his consent, and will lay the change at his door.* The

the Prince of Orange, raised a regiment (afterwards the 25th of the line), which was employed in the service of the new Government. Subsequent to the landing at Torbay, it was sent to take possession of Plymouth, and soon after to Edinburgh, to make head against the adherents of the late Government. The reader of Sterne will recollect that Uncle Toby and Corporal Trim were "of Leven's."

* Considering the importance of the proposed change in Scotland from Episcopacy to Presbytery, the king and his adviser seem to have proposed hurrying it over with inexpedient haste, in order to throw the responsibility of the change off the royal shoulders, and lay it entirely upon the Convention of Estates. The first step to it, the Act abolishing Prelacy, was not taken till the Scottish Convention was changed into a parliament, and the new settlement of the Church was

High Churchmen are alarmed here at his speech in Parliament, to take off all restraints of Protestants, that all of them might be capable to serve in this conjuncture. . . ."

By the end of March, accounts had reached London of the first proceedings of the Convention at Edinburgh, and Sir James was becoming anxious as to the state of matters in Scotland, where the Castle of Edinburgh was still held for the late king; and the Jacobites of the north, incited by Lord Dundee, were assuming an attitude of direct hostility.

Sir James Dalrymple to Lord Melvill.

"*March* 30.

". . . I have heard by my Lord Ross how things have gone there [in Edinburgh]; and now that you have been some time there (for he told me he met you between Berwick and Edinburgh), I hope the settlement of the nation will be put to a close, especially seeing ye are in danger from the Castle, and it is longed for here. I have been oft with the king, and have given him accompt of what I had from Scotland as things passed. . . .

"Remember me to your lady and son and Lord Tarbet. I am glad to hear he hath carried well. I am like to be arrested by Lock., and you may look

(not unreasonably) delayed till the next year. There was a great jealousy among English Churchmen on the point of the establishment of Presbytery in the north; and of this jealousy William dreaded the consequences.

for the like. I pray you, see if any relief can be made there." *

The concluding sentence of this letter refers, without doubt, to the place of president of the Session being still held by Sir George Lockhart, who had been appointed to that office by King James in 1685, and was allowed to retain it after the Revolution. Singular to relate, on the very day after the date of the letter, Sir George, when returning from church to his house in the Bank Close of Edinburgh, was basely assassinated with a pistol-shot by Chiesely of Dalry, a landed proprietor in the neighbourhood, against whom he had pronounced a decreet-arbitral. Chiesely was taken *red-hand*, as the old Scottish term is, and imprisoned.

The Court of Justiciary, before which Chiesely would at another time have been tried, was now in abeyance, there being as yet no new commission of judges. The Convention of Estates, the only sitting authority, took the reins of justice in its own hands. The murder was perpetrated on Easter Sunday, the 31st of March, and on the Monday following an extraordinary meeting of the Estates was held to consider a "Supplication" presented to them by the friends of the late president "for granting warrant to the magistrates of Edinburgh anent the torturing of John Chiesely, the actor of the murder, and of William Calderwood, writer, as accessory thereto;" whereupon the Estates appointed the Provost and two of the bailies, and also the Earl of Errol, Lord High Con-

* Melvill Papers.

stable,* to judge the murder, and to proceed to torture Chiesely, for discovering if he had any accomplices; and they nominated six of their number (one of whom was Sir John Dalrymple) as assessors to the said judges, and to report what evidence should arise against Calderwood, that they may consider if he should also be tortured; and they further declared, "that albeit in this extraordinary case they have allowed torture, yet the same shall be no preparative or warrant to proceed to torture at any time hereafter, nor homologation of what has been done at any time by-past."†

The prisoner was forthwith put to the torture before the magistrates and procurator-fiscal of Edinburgh, and he declared that he was not advised to the murder of Sir George Lockhart by any person whatever, and that he had done it with previous intent. He was on the day after tried by the Lord Provost and magistrates and a jury, upon indictment at the instance of the procurator-fiscal and the nearest relatives of the deceased, and upon evidence of the fact was condemned to be hanged at the market-cross the next day (April 3), his right hand to be cut off and his body hung in chains, &c.‡ The sentence was

* The Lord High Constable declined to take part in the trial.

† Act. Parl. Scot., ix. 30. At the date of this meeting of the Estates, no Lord Advocate was in existence under the new Government, and the procurator-fiscal of the city conducted the case against the prisoner, apparently both for the public interest and on behalf of the relatives of the deceased. The proceedings were altogether irregular and exceptional, and the case has never been cited as a precedent.

‡ Arnot's Criminal Trials, p. 150. By Act of April 11, 1689, passed in the week following that of Chiesely's trial and execution, the Estates, in their Declaration and Claim of Right, declared "that the

carried into execution. Considering this so short shrift and hasty proceeding, it is matter of congratulation that judicial humanity has made some progress since the Revolution of 1688.

It is an instance of the very tolerant character of William's administration, that the president of the supreme court in Scotland should not have been removed upon the change of government at the Revolution, while Sir James Dalrymple had, with becoming delicacy of feeling, refrained from urging it. His resumption of his place as president, when by a singular fatality the obstacle in his way ceased to exist, is referred to in a letter of the 9th April to Lord Melvill, in which various matters of interest are touched upon, and particularly the political ground upon which the lapsing of the late king's right should be put. His theory of its having lapsed through the breaking of an *implied contract* between James and his people, differs not only from the English theory of *abdication*, but from the bolder view, pressed with great force by Sir John Dalrymple and adopted by the Convention, of King James having *forfeited* his right.

". . . My letters from Scotland bore that there were preliminaries thinking on e'er the throne was settled. The vote of vacating the throne is but pre-

using torture *without evidence* or *in ordinary crimes*, is contrary to law." Upon the strength probably of the salvoes in this declaration, torture was used in Scotland several times in the course of the reign of King William. In the second and revised edition of the Institutions (1693), torture is only once mentioned by Lord Stair, and that incidentally, as a mode by which proof by the confession of the party may be in certain cases attempted to be obtained.—Stair, Instit. iv. 44, 45.

paratory; and the term of "forfeiting" the king's right seems harsh, implying that the Convention had a superiority of jurisdiction, whereas the solid ground is, that the king having violated the constitution of the kingdom in both its sacred and civil rights, the Convention, as representing the body politick, did declare, that seeing he had violate his part of the mutual engagements, they were free of their part, for they could not fail on the one part without freedom to the other to liberate themselves; and seeing the violations were so high as to refuse, reject, and renounce the government of the kingdom according to its true constitution, and to assume a despotic and arbitrary government, neither he nor any come of him after that could have any title to reign, and therefore declaring for King William and Queen Mary, the administration being in him alone during his life, &c. There is a great difference between disclaiming or renouncing government, and other violations, for that doth lose the right *ipso facto*, whereas other violations do not, but only give the injured liberty to liberate themselves, as adultery doth not dissolve a marriage *ipso facto*, but gives the injured liberty to loose themselves. I wrote formerly that the Parliament here was like to be cross to the Dissenters. Now, blessed be God, things go better. The moderate Churchmen leave the Tory party, and there are acts, both of comprehension, leaving most things that are unwarrantable free, and of liberty very large near completing.* That shame-

* Of the measures then before the English Parliament here alluded to, the Toleration Act was passed; the Comprehension Bill, providing a larger relief to Nonconformists, was allowed to drop.—Macaulay's England, iii., chap. 11.

ful murther of Sir George Lockhart touched the king much, and made him say to me he saw it was necessary that I should resume my place again, which I was willing, though it was my right, that he should enjoy, being younger and abler to endure the toil than I. If the altering the Church government [by Charles I. and Charles II. from Presbytery to Episcopacy] be found an encroachment and declared void, it is much better than to expect it by an Act requiring the king's consent, which will relish ill here. The king spoke kindly of the Union this day; if the terms be special, it will make no delay. I meet with many eminent peers here and others who are all much for it.* My letters did bear that amongst the preliminaries it was like that the Act 1641 would be renewed for putting the nomination of the officers of state, councils, and judges, on the Parliament. I told you what was said on that head to me here, and that I answered that was to leave nothing to the king but an empty name. I find the king concerned against it. You would, therefore, be careful to prevent it. Adieu."

William and Mary having been proclaimed king and queen in Edinburgh, and the sittings of the Convention closed, the Earl of Argyle, Sir James Montgomery, and Sir John Dalrymple, as deputed by the Estates of the nobility, freeholders, and burgesses, had the ceremony carried through in London of

* An Act was passed by the Scottish Convention, nominating Commissioners on the part of Scotland to treat as to a union of the kingdoms; but no farther steps were taken on the subject in the reign of William.

offering to their Majesties the Scottish crown.* All the natives of Scotland of any note in London are said to have been present, and Sir James Dalrymple among the rest. Without giving him credit for more enthusiasm than belonged to his temperament, we may well imagine that his feelings upon this consummation of all his wishes as regarded political government were those of intense satisfaction. It will, however, immediately be seen that, as in most similar cases, there was a considerable infusion of bitter in his cup.

Upon the meeting of the convention parliament in June, the Duke of Hamilton appeared as Royal Commissioner, Lord Melvill as Secretary of State for Scotland, and Sir John Dalrymple as Lord Advocate. The new appointments of president of the Session, and other judges, were delayed during the summer months, Sir James Dalrymple going in June to his estate in Wigtonshire.†

The debates in the Parliament were of a stormy character, animosities breaking out among the Government party in the absence of any decided opposition on the part of the few Jacobites in the House.‡ A

* The proceedings on this occasion will be more particularly referred to in the Life of Sir John Dalrymple.

† Sir John Dalrymple to the Duke of Hamilton, May 30, 1689; Dalrymple's Memoirs of Great Britain.

‡ Colin Lord Balcarres, in his Memoirs, says that these animosities were particularly "directed against Stair, who, although he had always inclined to the Presbyterian party, yet had many enemies amongst them, as well as on the opposite side. The loyal party thought him too narrow and limited in his principles for them, and the Presbyterians too moderate, and that [at a time] when their interests were ruined, he had served kings too long to be again re-established in his former post, when they well saw what influence he must needs have (being a man

decided feeling was exhibited in the debates and expressed by a vote of the majority against the employment in places of public trust of persons who had been "grievous to the nation" by their compliances and actings under the previous Governments. This vote was chiefly directed against Sir James and his son; but the royal assent was withheld from it as being essentially opposed to that spirit of moderation which the king, unwilling to alienate or proscribe any class of his subjects, was desirous of infusing into his Government.

Another vote which excited much interest related to the appointment of the lords of Session and election of the president. In the case of a total vacancy of the bench occurring, as by a change of dynasty, the vote went to confer on Parliament the right of trying the judges, and admitting or rejecting them after nomination by the king. In the case of a partial vacancy, the new judges were to be tried and admitted or rejected by the other lords of Session, the choice of the president being made to rest with the whole judges.* These views of the Parliament as to judicial appointments failed to receive the sanction of the royal commissioner, the king justly regarding them as entirely adverse to and involving a curtailment of his prerogative. While the *form* of the trial and admission of the new judges by the Court of Session and the election of the president by the other judges was allowed to continue, it was understood on

of sense and law) to restrain the violences they intended to use upon all who had been employed or got favours in former reigns."

* Proceedings and Votes of the Parliament of Scotland stated and vindicated; Apology; Lord Cardross to Lord Melvill, July 20, 1689—Melvill Papers.

all hands that the actual appointment to judicial offices was placed, or rather left, in the hands of the Crown. A complete Commission of judges, including Sir James Dalrymple as president, was delayed till after the prorogation of Parliament.

This took place abruptly in the beginning of August. In October, Lord Melvill, by command of the king, sent to the Earl of Crawford, president of the Council, a Commission for the fifteen lords of Session.* The list commenced with Sir James Dalrymple, and the royal warrant concluded with appointing "the said Sir James Dalrymple of Stair to be inserted in our said Commission as constant President in absence of our Chancellor." †

Early on the 1st of November, Lord Stair arrived from the country, "after a toilsome journey [on horseback] by a deluge of rain," to begin the session. ‡ The Court having met the same day, the oaths were administered, and the statutory forms gone through of admitting the new judges. The venerable president then informed the Court (with an amusing gravity), "that although he was restored by way of justice

* In a letter to Melvill (Nov. 2, 1689) immediately after the new appointments were made, the president writes: "I must say there never was so good a constitution of Session, being all persons of considerable interest and natural abilities, and most of acquired skill, and men of integrity. I hear of no noise as to this matter. I know not what some that are on their way may kindle."

† Melvill Papers, p. 307. One of the individuals named (Sinclair of Stevenson) declined accepting, as not being sufficiently versed in law. Another (Sir James Falconer) accepted with some hesitation, having formerly expressly declined any such proposal "in regard that hitherto this station hath been too precarious, which occasioned great inconveniences, both to the judges and many of all ranks of people."

‡ Melvill Papers—Sir James Dalrymple to Lord Melvill, Nov. 2, 1689.

according to the king's declaration, yet he was willing to submit himself to the Lords, and if they were not satisfied that he should resume that heavy charge, he would not in so disquiet a time, and in such an age, subject himself to so much trouble and toil;" and he then retired to another room. Upon which their lordships, having chosen a vice-president for the occasion, "did unanimously and heartily acquiesce in their Majesties' nomination of Sir James Dalrymple of Stair to be President, as a person most worthy to discharge that trust, and declared that if it had been absolutely at their disposal, they would have elected him constant President." *

Lord Stair was thus duly installed in the chair of the Court of Session, from which he always held that he had never been legally deposed. There had been practically a surcease of justice in Scotland from August 1688 to this 1st of November 1689, no business of consequence having been done, except in a few cases of urgency.† Justice was now restored to its former channel, and this constitution of the Court continued to exist with hardly any variation till the year 1808, when the venerable "Fifteen" were, by

* This rule of submitting the election of the president to the other judges (the real appointment being with the Crown) could not well have had any other result in the present instance than is stated in the text, considering that the whole bench of judges was assorted and the nominations advised by Stair himself. As to this Forbes of Culloden (father of the President Duncan Forbes) remarks (Culloden Papers, 326): "But one thing at that time became apparent, that however my Lord Stair might profess that he desired pretty men to sit with him upon the bench, yet *reverâ* he shunned any who he thought would debate with him, and took in (so far as he could) none but such as he knew would comply with him;"—a very practical mode of oiling the judicial machinery of the Session!

† Fountainhall, Hist. Notices, ii. 884.

Lord Grenville's Act, divided into two chambers or Divisions, the original and appeal jurisdiction of the Court undergoing also new regulation.

Lord Stair had many enemies, both among the discontented politicians of the "Club," of whom Sir James Montgomery and Sir Patrick Hume of Polwarth were the chief, and amongst the adherents of the late royal family, who were ever on the watch to find fault with the new or revolution settlement. "Ever since the president came here" (the Solicitor-General Lockhart wrote to Lord Melvill), "there have been endeavours used to hinder the advocates to come to the Session-house by those of the Club on the one hand, and the late kingsmen on the other." The Club boldly asserted the constitution of the Session to be illegal, while the Jacobites regarded with odium the obligations on all persons in situations of public trust to take the oath of allegiance. The barristers in this condition of matters were not a little puzzled, many of them being of Jacobite leanings, while, according to the custom of Scotland, they were, from their profession, persons in public trust. Twenty-four of the advocates appeared in their gowns in Court upon a day appointed, and took the oath of allegiance, the president making upon the occasion "a very kind, discreet discourse, extremely satisfying to all."* For many years after this, the bar of Scotland continued to be strongly tinctured with Jacobitism.

William and Mary had now occupied the throne a year. Quietness and order were in some measure restored in Scotland, to which the fatal blow inflicted

* Sir W. Lockhart to Lord Melvill, Nov. 12, 1689—Melvill Papers.

on the Jacobite cause by the death of Viscount Dundee at Killiecrankie, the prorogation of the Parliament, and the settlement of the courts of justice, may all have contributed. Soon after this, however, a shell was thrown among the Government party which caused no little alarm. A pamphlet, bearing to be printed at Glasgow, but, to judge from internal evidence, hailing from London, appeared anonymously, written with more than average ability, and embodying the views of the parliamentary opposition. It was entitled "The late Proceedings and Votes of the Parliament of Scotland stated and vindicated." Commencing with an attack upon President Stair in his confidential relations with King William, it poured forth a vast quantity of scurrilous abuse of himself and his son as having been instruments of the former tyranny, and unworthy of trust in the new reign. It has been usually ascribed to Robert Ferguson, historically known as "the Plotter," writing from materials furnished to him by Sir James Montgomery. So direct and personal were the accusations that Lord Stair considered it of sufficient importance to be answered in a short printed paper, to which he gave the title, "An Apology for Sir James Dalrymple of Stair, President of the Session, by Himself," in which a masterly defence is made of his public career, and of the most trying passages of his life.*

Comparing the time of the appearance of this opposition pamphlet with the dates of the discovery of the Jacobite plot soon afterwards brought to light, in which the double traitor Sir James Montgomery was

* The Apology was printed at Edinburgh, 1690, on four quarto pages. It is reprinted in the Appendix.

so deeply implicated, along with Lords Ross and Annandale, it is probable that the pamphlet was put out as a pilot balloon to prepare the way for the schemes of Montgomery and his friends.* This was, at all events, its obvious tendency. That the abuse it contained was chiefly directed against Stair and his son, while the obvious aim of the plot was nothing less than a counter-revolution, shows clearly enough the importance attached to both of them as leading members of the Government party in Scotland. As long as the Dalrymples were in power the "Club," and especially those of their number who were engaged in the plot, were perfectly aware that their projects and schemes were continually liable to be checkmated.

* See Confession of the Earl of Annandale, Dalrymple's Memoirs of Great Britain, iii. 54. When the plot was discovered by the plotters betraying each other, Lord Melvill's connivance at Montgomery's share in it was so marked as to justify his being taken to task for this connivance by the Sol.-Gen. Lockhart.—Melvill Papers, No. 427.

CHAPTER IX.

President Stair not in favour of appeals to Parliament—His unpopularity—Views as to the king visiting Scotland—He is raised to the peerage—Settlement of Presbytery—Question as to calling out the militia—Death of Lady Stair—Attack on Lord Stair in Parliament—He is in danger of conflict with the Presbyterian clergy on the oath of allegiance and the royal supremacy—His death—And character—Posthumous work on the Divine Perfections—His surviving descendants.

Although the right of an appeal to Parliament against decrees pronounced by the Session had been specially mentioned in the Declaration of Rights, no arrangement for giving effect to it had yet been made. President Stair regarded an appeal from the Court of Session to Parliament (in which he sat for the county of Ayr) with no favour. On the 1st of January 1690 he wrote to Lord Melvill: "Yesterday the Lady Collingtown presented an appeal to the Parliament; the Lords have done nothing concerning it, hoping she will take it up [withdraw it]. It will be thought strange that from one so near related to your lordship the first blow against the Session should be given."

Any supposed weak point or flaw in the public conduct and life of the president, or of his son, was at this time unscrupulously taken advantage of by

their enemies and calumniators, so as not only to affect their popularity, and possibly afford a pretext for proceedings in Parliament, but to convey an unfavourable impression of them to the Government. With reference to attempts of this kind, the president writes to Melvill (Jan. 21, 1690) that he was "not a little surprised upon the sight of a letter of yours to my son, bearing that your lordship had information of something concerning him or me that you would not believe till you heard it from some of us, and which you did not express, but that we might easily know what it was. All I can conjecture is that we are either diffident of your friendship or disobliged. I have lived with you in the intimatest friendship for many years, when we had nothing to divert us from daily converse, with the fullest sincerity and openheartedness imaginable; and God knows I never had distrust of your friendship or kindness. . . . That malicious libel lately printed, and all of that sort, puts us all in one scale, but when it makes so bold with the best of kings, I am less concerned, though I hope all these calumnies will be dissipated; and that I and my son are so sore run at may very evidently show it is our unreserved faithfulness and forwardness for the king, in whose justice and goodness I have so full confidence, that I rest in the peace of my conscience upon it." The president concludes his letter with a congratulatory remark on the somewhat more than normal state of harmony in the Session, expressing his conviction that the nation had never been better provided in judges.

A serious expectation was at this time entertained of the king visiting Edinburgh in the course of the

spring.* "There must then" (the president writes to Lord Melvill) "be a proclamation for that purpose; and, considering the poverty of this nation at this time, I think it were very convenient that therein the Sumptuary Act should be peremptorily enjoined.† If it be not, all here will vie with the English, and it will cost more than the subsidy the king will require. Ross and Skelmorlie [Earl of Ross and Sir James Montgomery] are gone west, and have carried great quantities of their scandalous pasquil [Ferguson's pamphlet] against the king and his servants. There was a second edition printing here by one Reid, but it is seized on and he in prison: an answer to it were very fit.‡ . . . I find, by the common opinion here, that if the king use the English [Church] service here it will give great discontent.§ If some of the English Presbyterian ministers were come down with him, they might have great influence on our ministers here. I write freely to your lordship what falls in my thought, though you never write a word in particular to me. By all means bring down Mr

* Earl of Crawford to Lord Melvill, 28th Jan. 1690; Sir John Dalrymple to Lord Melvill, Feb. 4, 1690. "It's past all doubt," says Sir W. Lockhart in a letter of the same date, "that the king must at least bring Parliament robes with him, whether he put them on or not, and be always in Parliament. We are not a people that must be used to sit without a head, lest we forget we have one."—Melvill Papers.

† The Act here referred to was the Sumptuary Act of Charles II., 26th July 1672, restraining prodigality in apparel, and prohibiting the wearing of foreign brocaded stuffs, gold and silver lace, &c.

‡ The answer was made by the president himself in his Apology. The imprisonment of the printer, Reid, is an example of the summary way in which libels were then dealt with.

§ Until the reign of George IV. who attended divine service in St Giles's, Edinburgh, when visiting Scotland in 1822, no English sovereign since the Revolution ever attended public worship in Scotland. Her present Majesty's laudable practice in this particular is well known.

Carstairs with you, whose prudence may be of much use."

In view of the expected sitting of Parliament, the various factions opposed to the Government, particularly the unruly members of the "Club," gave promise of impending squalls. "The point most stuck at," Sir Patrick Hume writes in February* to the king, "is the setting this bench of Session, and the person chiefly designed against is the president; and truly one cannot easily imagine with what fervour and heat both are considered, even as if the whole interest of the nation, both sacred and civil, were to stand or fall by the event of what is designed concerning them."

The king's visit to Scotland (for he was not to be accompanied by the queen) became impossible from the disturbed state of public affairs and the hostile attitude of Ireland, and the meeting of the Estates of Parliament was adjourned till April.† Melvill

* February 11, 1690—Melvill Papers, 402. Sir Patrick Hume of Polwarth (created Earl of Marchmont in 1697) had been engaged in the Earl of Argyle's ill-concerted invasion of 1685. Upon its failure, he remained for some time in hiding in Scotland, and then escaped to the Continent. He returned from Holland with the Prince of Orange at the Revolution, and subsequently took an active part in Scottish affairs.—Marchmont Papers; Lady Murray of Stanhope's Memoir of Lady Grisell Baillie. The letter, from which an extract is quoted in the text, is formally subscribed by Duncan Forbes of Culloden (father of President Forbes), as well as by Sir Patrick Hume. It is strongly in favour of the king coming to Scotland, as "his presence would dispel many dark clouds and calm our storms."

† This adjournment till late in the spring, which excited much discontent, was owing to the king's dislike to have the English and Scottish Parliaments sitting at the same time.—The King to Lord Melvill, March 20, 1690—Melvill Papers. In a letter to the king of the same date (Dalrymple's Memoirs of Great Britain, vol. iii. Appendix) Lord Melvill writes: "People lay the adjournment of the meeting of Parlia-

was appointed Royal Commissioner instead of the Duke of Hamilton. Previous to the meeting of the Estates, Stair was raised to the peerage—the king thus unequivocally marking his determination to stand by his tried adherent and counsellor at all hazards.* He was created Viscount Stair, with limitations to the heirs male of his body, and took the oaths and his seat in Parliament on the 1st of May. Upon the 9th of May he was named one of a committee of eighteen (six from each Estate) "anent settling the Church government," the most important subject to which the attention of Parliament was in this session to be directed.†

The proceedings of the Estates, when assembled in Parliament, very soon bore testimony to the ascendancy of the Government party and the discomfiture of the opposition. The designs which had been talked of as in contemplation against Stair and his son came to nothing. Sir John Dalrymple's parliamentary management and debating powers were conspicuously exerted on behalf of the Government, in which he now held the situation of King's Advocate; and the growls of his own and his father's adversaries, awed by the force of his superior ability and power of speech, sank for the time into a hardly perceptible whine.

The Act for settling the Church government on

ment at Lord Stair's door, at whom the great spite runs—not so much from reason as out of pique and humour."

* The assertion of Forbes of Culloden that Stair had been made a Viscount with no other design but to invite him to demit, is unsupported by even a shadow of evidence.—Culloden Papers, p. 332.

† Act. Parl. Scot, ix. 112 *et seq.* President Stair's name appears also as one of the Visitors appointed for colleges and schools, and in the commission "for plantation of kirks and valuation of teinds."

the Presbyterian model took the lead of all other business; and although Lord Stair, while his son was acting for the Government, took no prominent part in the discussion, there is every reason to believe, from expressions in his correspondence, that his counsels to the Presbyterian party were in favour of moderation in this their day of triumph.* The Act for transferring the patronage of churches from the old patrons to the "Heritors and Kirk-sessions," with a provision for approval by the congregation, was carried mainly through the influence of Lord Melvill, the Royal Commissioner, who was empowered by the king's Instructions to assent to this change, "if Parliament shall desire the same." I am not aware of any expression of Stair's individual opinion on the subject of Church patronage.

During the discussion in Parliament of these important statutes, the Court of Session was wellnigh deserted. An occasional Act was passed, on the preamble that it would "not be convenient now in this time of troubles for the Court of Session to sit when the lieges were diverted from attending that judicatory," authorising the Lords of Session to meet on those days only when the Parliament was not sitting.†

With the exception of a casual reference, in his letters to Lord Melvill, to the disturbances caused by the Highland clans, and the necessity for repressing their depredations, Lord Stair seems to have taken no part in the proceedings instituted in 1691

* The Acts of this year will be more particularly referred to in the life of the first Earl of Stair.

† Act. Parl. Scot., ix.—June 30.

for pacifying the Highlands, the chief actors in which were Sir John Dalrymple (now Master of Stair and Secretary of State) and Lord Breadalbane. In the summer of that year the Scottish Privy Council were engaged in a keen discussion on the subject of calling out the militia. The members of Council divided five to five on the question of issuing the proclamation for the militia, Stair being strongly in favour of it. In a letter to Carstairs, who was then with the king, the Earl of Crawford, an opponent of the measure, gives a graphic account of the Council's proceedings: —"The Viscount Stair, who was the first projector of that matter, and all along carried it on with a great solicitude, practised thus with the dissenting members: 'My Lord Cardross,' says he, 'I know where your scruple lies. By the privilege of the Mint you are exempted from attending the king's host, and cannot be forced to it but by consent, and are unwilling to wrong your successors in their rights. . . . Therefore you may cause mark it in the minute that your signing the proclamation is no homologation of your acceptance of that trust, nor yet a parting with your privilege in the Mint.' Upon which my Lord was prevailed on to sign the proclamation. The same wise man then addressed my Lord Ruthven in thir terms: 'By your temper your lordship is not wilful, nor are you commonly wedded to your own opinion; and as Abraham, by his pleading for Sodom, would have prevailed if there had been ten righteous in the city, so it was hoped that for a few ill men that came out of the northern shires he would not reject the western, southern, and inland counties, who would be such a defence to the nation

in case of an invasion.' The discourse was then to the Lord Justice-Clerk [Cockburn of Ormiston], that his lordship had been long sick, and it would be understood peevishness if he were further dissentient. Upon which his lordship likewise complied. My Lord Fountainhall was then told that, being no soldier, it was expected he would not be tenacious; and that, as he was a notable countryman and tender of putting the country to any unnecessary charge, his lordship should be gratified, and whatever money was saved of the forty days' loan should go in to the payment of the current cess. Upon which his lordship was likewise proselyted. The old Earl of Crawford proved stiffer than the rest, arguing against Stair that it was ill policy at this juncture, when there was no probability of an invasion, to impress the country by fears and put them to so vast a charge, and that it appeared dangerous to call out the militia in the shires be-north Tay, who were so generally disaffected to the present establishment that there were not four or five in a whole county that could be trusted." *

Except on occasions of such discussions as this in the Privy Council, Lord Stair's time was now fully occupied by the sittings of the Court in Edinburgh, and his country pursuits in the vacation. In a letter

* June 16, 1691; Carstairs State Papers, p. 143. Although Lord Crawford does not expressly say so, it would seem that a proclamation for calling out the militia was the first result of this Council's deliberations. But, in a subsequent passage of the same letter, he writes: "When the Council became more numerous, and many representations were made from the country, and the discourses of an invasion had less belief, a proclamation was issued out *discharging the militia* until further orders, which by some days prevented [anticipated] the queen's letter to the same effect."—P. 146.

from the Duke of Hamilton to Melvill,* in the autumn of 1691, a casual mention of him occurs: "This day the president of the Session dined with me on his way to Edinburgh; he denies to have any thoughts of going to London this winter, and said he knew nothing that was doing, having been so long in the country."

In the following year Viscountess Stair died at Edinburgh. Her remains were deposited in her son's vault in the church of Kirkliston, West Lothian. The story referred to by Sir Walter Scott, of the old lady's coffin having been set in an upright position as a charm to insure the prosperity of her family, is in all probability a myth. While by the superstitious vulgar her ladyship had long been reputed a witch, she was regarded with feelings of more than dislike by the political opponents of her husband, and by all those (and they were not few) who envied the recent exaltation of her family.†

* Oct. 5, 1691—Melvill Papers, p. 646.

† In a collection of lampoons referred to by Mr C. K. Sharpe in a note to Law's Memorials, p. 227, there is preserved an elegy upon Lady Stair, entitled "Satirick Lines upon the long-wished-for and timely Death of the Right Honourable Lady Stair." A few lines of this elegy, which is in doggerel verse and sufficiently abusive, may be quoted as an example :—

"News, news! my Muse, on Friday be it said,
'Tis now confirmed, the Witch of Endor's dead.
And all men wonder what kind devil is this
Of such a monster hath bereaved us.
. . . . . .
Rejoice all Clubbers, Ross and Skelmorlie,
Dalrymple's faction now has lost an eye;
The moon shall shortly change, be glad and merry,
My Lady Stair is over Charon's ferry.
Johnston, rejoice with your friend Ormiston;
And you, Sir William, with Duke Hamilton:

It is not at all wonderful, considering the violent party feeling which then existed in Scotland, that occasional irregularities in the administration of justice should be set down by those who were always on the watch for grounds of complaint against him, to the account of Lord Stair rather than of the inveterate habits of the Court over which he presided. There still continued in the practice of the Court of Session an unsatisfactory looseness in several important particulars, for which Acts of Parliament and Acts of the Court had as yet found no adequate remedy; as in the writing out and signing of the decrees of Court, the order in which the judges should hear causes, and the advising of processes, civil or criminal, with closed or open doors: but in default of any special evidence, it is inconsistent with equity to lay the blame of this looseness of proceeding at the president's door. Instances of abuses in such matters may very possibly have

> The cat which crossed your cushion in the church
> Is dead, and left her kittlins in the lurch.
> . . . . . .
> Now, Lady Crighton, you may stir your stumps,—
> Your flying days are done, put on your pumps;
> That Stair shall shortly follow, here's a token,
> Your strongest pillar's lately fallen and broken," &c.

The Lady Crighton here apostrophised was the third daughter of Lord and Lady Stair, married to the eldest son of the Earl of Dumfries. Lord Ross, Sir James Montgomery of Skelmorlie, Johnston of Warrieston, the Justice-Clerk Cockburn of Ormiston, and Sir William Hamilton of Whytelaw (referred to in the previous lines) were all hostile to the Dalrymple family. I have refrained from quoting more largely from the printed Scottish "Pasquils" of that period (which have been industriously collected by Mr James Maidment), as, however curious, they cannot be regarded as reliable evidence either of facts or character.

occurred, seeing that in the parliamentary session of 1693 remedial Acts were passed with reference to the particulars above mentioned. These Acts were probably suggested by Lord Stair; but the fact of their having been required is not to be twisted into evidence (as some writers have been inclined to do *) of malversation on his part. In the absence of any direct proof whatever, such indirect methods of aspersing the character of a great lawyer and statesman cannot be regarded with approval.

Viscount Stair was present at the meeting of Parliament on the 18th of April 1693,† two years having intervened since the Scottish Estates had been called together. The Duke of Hamilton was Royal Commissioner. A strong inclination was shown on the part of Stair's adversaries in Parliament to attack him in some way; the Secretary Johnston (son of Johnston of Warrieston who was executed after the Restoration) taking much credit to himself, in his letters to Carstairs,‡ for warding off accusations and representations concerning him. At last their designs took a more formal and malicious shape than they had hitherto done. Two Bills of a retrospective character were brought forward by a committee of private members, tending to affect injuriously his office of President of the Session. One Bill provided that no Peer or Lord of Parliament should enjoy the office of an ordinary Lord of Session, and

* Laing's History of Scotland, vol. iv.; Burton's History of Scotland.

† Act. Parl. Scot., ix.

‡ April 18, 1693, and May 11, 1693; Carstairs State Papers.

his admission to such office should be void and null; and that the creating of any of the ordinary Lords a Peer doth and shall *ipso facto* render him incapable. The other proposed Act was declaratory that their Majesties may now and hereafter nominate and appoint one or more of the Lords of the Session to preside therein, for such time and by such courses and turns as they shall think fit, any law or custom to the contrary notwithstanding.

When these Bills were made public, and their intention understood, Lord Stair drew up and had printed a short paper or "Information," addressed to the Royal Commissioner and the Estates of Parliament, in which he put forth a clear and convincing argument in answer to the two Bills. He desired that article in the "Claim of Right" to be considered, which was framed for the security of property by asserting the right of the judges during life; and maintained that the Bills were contrary to the institution of the College of Justice, whereby one President is appointed, and in his absence a Vice-President, to be named by the king; and that even if there were any expediency in the proposed Acts, Lord Stair's office being his proper right during life, they or either of them ought only to take effect when the office should be legally vacant, and not run back; and that although the one Bill seemed to give the king a prerogative of making the Lords ambulatory, the other was an express straitening of his power, so as to restrain him from ennobling such as had been constant and faithful servants to the Crown, which was practised frequently by his Majesty's predeces-

sors ever since the College of Justice was instituted, —to show which practice more fully, Stair referred to numerous precedents.* It is almost unnecessary to add that neither of these offensive Bills became law.

The part taken as a Privy Councillor by Lord Stair in pressing upon the General Assembly of the Kirk in 1694 the taking of the oaths of allegiance and assurance, which were ultimately dispensed with upon the strong representations of Carstairs to the king, will be noticed in the life of the first Earl of Stair, who had, from his position as Secretary of State, more concern with the ecclesiastical proceedings of those years.

The inquiry into the particulars of the tragedy of Glenco by the Royal Commission appointed for that purpose, took place in the following year; and although the result of the inquiry, as inculpating his son, may have caused Lord Stair not a little vexation, there is no reason to believe that he concerned himself in it farther than as a privy councillor he could not avoid.†

He was now approaching that goal where rest awaited him from the labours of a lifetime, and relief from much trouble and annoyance. In the autumn of 1695 his health gradually declined, and in October he was very unwell.‡ He died on the 23d of

* This was the last composition to which Lord Stair put his name. Being extremely rare, it is reprinted in the Appendix to this chapter, from a copy in the Advocates' Library of Edinburgh.

† See Life of Sir John Dalrymple, first Earl of Stair.

‡ Sir James Ogilvy to Mr Carstairs, Oct. 26, 1695—Carstairs Papers.

November, in the 77th year of his age, and was buried in the church of St Giles, in Edinburgh.*

There is ground for supposing that Lord Stair's vacations and intervals of leisure during the last year or two of his life were occupied in the composition of a treatise which appeared anonymously after his decease, entitled 'A Vindication of the Divine Perfections, illustrating the glory of God in them by reason and revelation, methodically digested into several Meditations.'

The Meditations are divided into chapters treating of the various attributes of the Godhead. An expression of piety is their prevailing characteristic; but with this we find interspersed a considerable amount of metaphysical, theological, and scientific speculation.† Stair's views of natural science in this work are much the same as those previously developed in his 'Physiologia nova experimentalis.'

That Lord Stair was a transcendently great or

* In consequence of alterations afterwards made in the church, the vault or place of interment where Lord Stair's remains were deposited is not known.

† The form of the work is a small octavo volume of 356 pages. The chapters are eighteen in number—viz., 1. Introductory; 2. Upon God's being a Spirit; 3. Upon the self-existence and eternity of God; 4. Upon God's omniscience; 5. Upon the will and pleasure of God; 6. Upon the power of God; 7. Upon the oneness of God; 8. Upon God's freedom; 9. Upon the blessedness of God; 10. Upon God's holiness or Godlikeness; 11. Upon the unchangeableness of God; 12. Upon the goodness of God; 13. Upon the truth of God; 14. Upon the justice of God; 15. Upon the mercy of God; 16. Upon the faithfulness of God; 17. Upon the wisdom of God; 18. Upon the dominion of God, and His dispensations thereof towards His rational creatures, especially the Covenant of Works and the Covenant of Grace. The book is recommended in a preface (I know not whether at the instance of Stair himself or of the bookseller) by two eminent English Nonconformist divines, Dr William Bates and the Rev. John Howe.

heroic character is not pretended. He was not one of those men, appearing at rare intervals, who powerfully influence and mould to their will the age in which they live. Nor was he one of those indomitable spirits who set themselves in uncompromising opposition to the evil times, upon which it may have been their lot to fall.* Although holding strong and early-formed opinions in favour of the Presbyterian form of worship and church government, he never regarded (like some of his Scottish countrymen) the distinction between Episcopacy and Presbyterianism in the same light as the difference between Popery and Protestantism. He was a Protestant with decided Presbyterian leanings, and he stood by his Protestant principles in the most trying crisis of his life. He never allowed himself to be made an instrument of Government oppression, while to a certain extent he went with the times during most of the reign of Charles II. When some of his contemporaries, holding opinions as to Church and State not materially differing from his own, lost their lives or liberty or estate, he preserved all these. Sympathising (as it must be supposed he did) with the Covenanting frequenters of conventicles, he yet kept upon friendly terms with Lauderdale, and as long as he could with the Government. Holding the principles more openly professed by him in his earlier and later life, this caution and what may be termed management, used by Stair during great part of the reign of Charles, have made his character to be sometimes

* "Et cuncta terrarum subacta
Præter atrocem animum Catonis."—*Hor.*

regarded as more dark and mysterious than it really was, having regard to the circumstances I have referred to.

Having adopted and continuing always to follow the profession of the law, Lord Stair looked to it, not as the chief but as a main object of his life. The standard of political morality was not in his time by any means high; but there were limits of compliance beyond which he declined to go, giving proof of this both in the earlier period of the reign of Charles, and more distinctly afterwards, when he preferred exile and the loss of his office to countenancing the Duke of York's proceedings in favour of Popery.

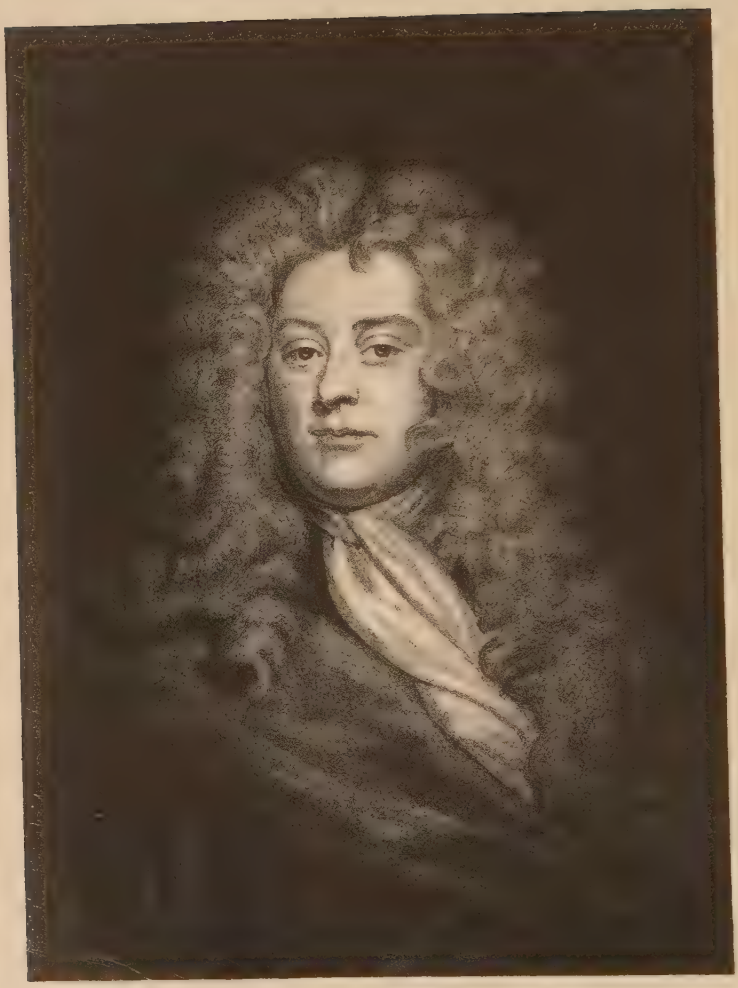
Lord Stair was a person of great and varied learning, inaccurate in his views of natural science, but excelling in speculative philosophy, and without an equal in his own country in the science and practical knowledge of jurisprudence; his 'Institutions of the Law of Scotland' calling forth at the present day the admiration of lawyers on either side of the Tweed. This work and his Collection of Decisions are evidence of his ability on the Bench; and although vague accusations have been made by losing parties and political opponents of perversions of justice by Lord Stair, re-echoed occasionally by modern writers, no proof that I am aware of has ever been adduced in support of such accusations. Stair was himself perfectly calm and passionless, a temperament which may possibly have been provoking to his adversaries, but which was eminently judicial. His varied acquirements and far-reaching sagacity, together with his agreeable conversation and manners, were early ap-

preciated, and recommended him successively to General Monck, to Charles II., to Lauderdale, and finally to King William. These qualities, coupled with his great experience and perfect knowledge of people and parties, and the almost phlegmatic moderation of his temper, made him a favourite counsellor and the chief adviser of William in Scottish affairs at the time of the Revolution—a critical period, when the characters of men were thoroughly tested and frequently found wanting.

Lord Stair left five sons—viz.: 1. John, second Viscount and first Earl of Stair; 2. the Hon. Sir James Dalrymple of Borthwick, Bart., a principal Clerk of Session, and author of 'Collections concerning the Scottish History,' from whom have descended Sir John Dalrymple, a baron of Exchequer in Scotland and author of 'Memoirs of Great Britain and Ireland,' and also the present Earl of Stair; 3. the Hon. Sir Hew Dalrymple of North Berwick, Bart., a Commissary in the Court of Session, and promoted in 1698 to be President; 4. the Hon. Thomas Dalrymple, physician in ordinary to the king in Scotland; 5. the Hon. Sir David Dalrymple of Hailes, Bart., Lord Advocate from 1709 to 1720, and M.P. for the Haddington burghs, from whom descended in the second degree Sir David Dalrymple, Lord Hailes, a judge in the Court of Session, and author of the 'Annals of Scotland.'*

* A Memoir of Lord Hailes and authentic list of his works has been contributed to the Encyclopedia Britannica (7th and 8th editions) by Mr David Laing, of the Signet Library, Edinburgh; from which memoir (by permission of the author) a short notice of Lord Hailes in the Appendix to this chapter is principally drawn.

His Lordship's surviving daughters were: 1. Elizabeth, wife of the seventh Lord Cathcart; 2. Sarah, married to Lord Crighton, who predeceased his father, the Earl of Dumfries; 3. Margaret, married to Sir David Cunningham, Bart. of Milncraig in Ayrshire.



FIRST EARL OF STAIR

BORN, 1648; *DIED*, 1707.

FIRST EARL OF STAIR.

CHAPTER I.

Early life of John Dalrymple—Travels, and is knighted—His marriage to Elizabeth Dundas, heiress of Newliston—Early training in the profession of the law—Trial of the Earl of Argyle—Persecution of Sir John Dalrymple by the Duke of York's Administration—Hand-to-hand encounter with Graham of Claverhouse—Imprisoned and fined, and at last, with difficulty, liberated.

JOHN DALRYMPLE, eldest son of the Lord President Stair and of Margaret Ross of Balneil, in Wigtonshire, was born in the year 1648. Of his early life little is known, farther than that he received the best education Scotland could give, and was brought up with a view to the profession of the law. We are told that when he was travelling in England, in the nineteenth or twentieth year of his age, in company with a friend, son of Sir Andrew Ramsay of Abbotshall, at the time of the first Dutch war, the two young men arrived at Chatham at the critical juncture when the Dutch fleet had sailed up the Medway; and that, with hazard of their lives, they assisted in saving an English man-of-war from being blown up by the Dutch, for which brave action Dal-

rymple was knighted by Charles II.* The following letter of recommendation from Lord Stair to the Earl of Lauderdale refers to this period of his son's life:†

"EDINBURGH, *June* 20, 1667.

"MY LORD,—I commanded my son to wait upon your lordship, and to remember my humble service to you. I was inclined to yield to his desire of going abroad for some time; but having met with Sir Robert Moray since he came hither, and taken his opinion in it, I find it very unfit in this juncture of affairs. I have therefore ordered him to return home without delay. It is like he might be desirous to go on in his journey or stay at London. I know he will follow your lordship's commands, and therefore I must put you to the trouble to hasten him home. Your lordship will be forced to get him a kiss of the king's hand, and any other mark of his Majesty's favour your lordship shall think fit. If he improve the capacities of nature and education that he hath, he may be able to do his Majesty service."

Whatever foundation there may be for the story of his prowess at Chatham, there is no doubt that John Dalrymple received the distinction of knighthood (if at that period so fertile in knights it could be called a distinction) at an early period of his life. In the year 1669 he was married to Elizabeth, daughter and

* Impartial Account of Transactions in Scotland concerning the Earl of Breadalbane, Viscount and Master of Stair, Glenco men, &c.: London, 1695. The hostile visit of the Dutch fleet to Chatham took place in 1667.

† Laing MSS.

heiress of Sir James Dundas of Newliston, in West Lothian. Sir James had, at the date of this marriage, been dead for some years; his widow, mother of Elizabeth Dundas, being married to a second husband, Sir Archibald Primrose, Lord Register of Scotland. About two years previous to her union with Sir John Dalrymple, the young heiress had been made the subject of a forcible abduction, which is thus noticed in a letter from Archibald Earl of Argyle to Lord Lauderdale:* "This morning I was at the examination [by the Scottish Privy Council] of those that are suspected to be accessary to the design of the rapt of the Register's daughter-in-law [step-daughter], which doubtless you have heard of. I make no question Mr William Dundas, the advocate, in whose house she was, being upon the knowledge and contrivement of it; if the Register or some person who would have followed it so smartly had not been concerned, she had returned not quickly, and many would but laugh at it; but now I know the Register will take it very kindly if you concern yourself in it, and that anything came from his Majesty to quicken the Council to look after it."

A committee of the Council, including Argyle, was appointed for trying this abduction of the fair Elizabeth, and particularly to take trial of Mr William Dundas's concern in the affair, who was in the mean time to continue a prisoner.† In the course of a week, the Council, "considering that a most violent and barbarous rapt was attempted on the 12th of this

* Letters of Archibald Earl of Argyle, printed for the Bannatyne Club, Edinburgh, 1829, p. 69.

† Records of the Privy Council, Feb. 14, 1667.

month by William Dundas, brother to Dundas of Morton," and others named, issued an order for his Majesty's subjects to seize upon the said persons, and to enter them prisoners. Some new circumstances transpiring as to the actors in the abduction, and the Council having received a letter from the king that his Majesty had been informed of a great insolence committed by an officer of the Earl of Linlithgow's regiment, assisted by certain soldiers, in violently carrying away a gentlewoman called Dundas, they recommended to their committee "to call before them such persons as they shall think fit, and to examine them, upon oath, anent the said matter."

No further proceedings of consequence were taken in the affair, and the lady proved herself in after-years an excellent wife to Sir John Dalrymple, distinguished alike for her good management at home and knowledge of country matters, and for her strict profession of religion.*

When admitted a member of the Scottish bar, which was not till after his father had become president of the Session, Sir John Dalrymple speedily distinguished himself by his good address and handsome presence, and still more by his ready eloquence and clear apprehension of law. From notices in the diaries and reports of the president's contemporary on the bench, Sir John Lauder of Fountainhall,† he appears in his early practice at the bar to have indulged

* There are no personal notices that I am aware of respecting this lady's married life, but several letters written by her to her son will appear in the life of the second Earl of Stair.

† The best collection of Lord Fountainhall's observations on passing events is that of the two quarto volumes entitled "Historical Notices," edited for the Bannatyne Club by its secretary, D. Laing, Esq.

freely in declamatory invective, and (even at that time) to have given no quarter to his adversaries,—a quality in his speaking which continued with him through life. He took no active part in the dispute that caused a secession of the bar in 1774 on the subject of appeals to Parliament from the Court of Session, the Lord President's position as chief of the court being a sufficient cause for his neutrality.

His first marked distinction at the bar was his appearance as one of the counsel for the Earl of Argyle at the trial of that nobleman in 1681 for treason before the Scottish Court of Justiciary. The ground of charge was—that Argyle had taken the recently enacted test oath with this explanation: "That he took it so far as it was consistent with itself and with the Protestant religion, declaring that he meant not to bind himself from endeavouring, in a lawful way, any alteration he thought to the advantage of Church or State not repugnant to the Protestant religion and his loyalty."* The prosecution was conducted by the King's Advocate, Sir George Mackenzie. The Earl had great difficulty in getting counsel to appear for him. The Dean of the Faculty of Advocates, Sir George Lockhart, the ablest lawyer then at the bar, having been at last engaged to take up the defence, he had the assistance of Sir John Dalrymple as his junior.†

According to the custom of Scotland at that time, the debate on the relevancy of the libel or indictment, which in the present instance involved the

* This test oath is printed in the appendix to chapter vii. of the life of Viscount Stair.

† Howell's State Trials, viii. 904 *et seq.*

whole case, was dictated verbatim by the advocates on either side, and written out by the clerk of court.* Sir John Dalrymple's pleading displayed great logical ability and power of argument; and his whole conduct in the defence, although unsuccessful, marked him in the eyes of his countrymen and of the Government to be possessed of abundant talent and resource. The judges pronouncing the indictment relevant to infer the pain of treason, and a few witnesses being called to the facts, Argyle was convicted by the jury, and sentenced to death, but escaped from prison.

In April of the following year a fatal accident occurred at Carsecreugh, Lord Stair's residence in Wigtonshire, where some of Sir John Dalrymple's young family were at the time residing. His second son, afterwards second Earl of Stair, then a boy about eight years of age, happened to be with his elder brother in the entrance hall of the house where two pistols were lying on a table. He took up one of the pistols, which proved to be loaded, and unwittingly shot his brother dead.† This is said to have caused so much grief to the parents of the boy, that they had him sent from home for a time to live with a clergyman.

The fate or Nemesis which, in the midst of their

* The Lord Advocate's "Argument and Plea" against the Earl of Argyle was followed by Sir John Dayrymple's "Defence and Plea" for the Earl, and then by Sir George Lockhart's "Second Plea," the debate concluding with the Lord Advocate's "Reply." The pleadings on the relevancy occupied one day's sitting of twelve hours. The judgment (or interlocutor) of the Lords of Justiciary "sustaining the libel"—that is, finding it relevant—and the formal examination of three or four witnesses to prove the points of the indictment, and the jury's verdict of "guilty," followed on the forenoon of the second day. Sir J. Dalrymple's "Defence and Plea" is given in the appendix to this chapter.

† Sir Andrew Agnew's Sheriffs of Galloway.

worldly prosperity, was popularly supposed to track the footsteps of the rising family of Dalrymple, seemed to have selected the house of Carsecreugh, where some years before Janet Dalrymple, Sir John's eldest sister, was married to Dunbar, as the scene of its inflictions. Before the end of the century, after the acquisition by Sir John Dalrymple of the fine estate and mansion of Castle Kennedy in the same county, Carsecreugh was deserted and allowed to go to ruin.

So far as the sunshine of prosperity may depend upon princes and governments, the Dalrymples were not in the year 1682 under its rays. The cloud that hung over the President Stair in the first years of the Duke of York's administration in Scotland darkened also the path of his son. Lauderdale was no longer to be counted upon as a friend at court; the chair of the President of the Session, now an exile in Holland, was filled by a stranger. Towards the end of this year Sir John Dalrymple was subjected to a course of harassing persecution on the part of the Government, the chief agent in this legal warfare being the celebrated John Graham of Claverhouse, then a captain of dragoons, and armed with a sheriff's commission and a Privy Council authority, in addition to his cuirass and pistols.* The Dalrymple tenants in the western shires were imprisoned and fined, while complaints and interdicts were had recourse to on both sides.

In December a complaint was brought before the Privy Council against Sir John Dalrymple by Claverhouse, on the allegation that he had weakened the

* Fountainhall, Historical Notices, i. 373.

hands of the Government in the shire of Galloway in traversing and opposing the commission which the Council had given to the complainer, under pretence of his (Sir John's) preferable jurisdiction as Bailie of Glenluce in that county, and had exacted fines too low in amount from his own and his father's tenants for attending conventicles, and did insolently laugh at Claverhouse's proclamation of a court, and so had obstructed the authority of his Majesty and the Privy Council. Dalrymple alleging in answer that the people of Galloway had become orderly and regular, Claverhouse replied "that there were as many elephants and crocodiles in Galloway as legal or regular persons,"—"meaning thereby," says Fountainhall, "that there were none of either, which was a bold accusation and reflection on a whole shire." *

This singular contest between the "bloody Clavers" and the future Master of Stair, illustrating the line—

"When Greek meets Greek, then comes the tug of war,"

resulted in Sir John Dalrymple being committed by the Privy Council, then presided over by the Duke of Queensberry, to the Castle of Edinburgh and fined £500 sterling, the Council considering this rigour absolutely necessary in order to discourage opposition to their military commissions. He was liberated upon payment of the fine in February 1683, making

* This sally of Claverhouse was probably provoked by Sir John Dalrymple's "Answers" to the Complaint, which were read in Council; Lord Fountainhall remarking that the Chancellor reproved him for the tart reflections he made on Claverhouse's ingenuity, and that there was much flame and humour in this case, and the cloud on the late president's family was taken advantage of now, showing the world's instability.—Hist. Notices, i. 389.

acknowledgment to the Council of his rashness, and craving pardon.

He now attended to his own affairs for a year and a half without any serious interruption. But his enemies were not done with him. Without any crime or new charge being alleged against him, in September 1684 he was, by order of the Privy Council, arrested during the night in his house of Newliston, and carried before a meeting of the Council at Holyrood House, while at the same time his papers were seized and examined. Refusing to make any new discoveries against the late Chancellor, Lord Aberdeen, now in his turn under suspicion of the Government, he was upon this pretext conveyed on foot with a guard of soldiers, like a common malefactor, up the Canongate and High Street of Edinburgh to the Tolbooth prison.* He was there kept in close durance for three months, and at last liberated within limited bounds upon the Earl of Lauderdale and his own brother-in-law, Lord Crighton, becoming bail for him to the amount of £5000.† The restraint was only gradually taken off, his bounds being at first enlarged from the burgh of Edinburgh to ten miles round it, and he was not set fully at liberty till the month of January 1686.‡

* Fountainhall, Hist. Notices, ii. 558.

† Ibid., ii. 579. No crime being alleged against Sir John Dalrymple in justification of this imprisonment, he is said to have remarked at the time that he suffered for the *original sin* of his Presbyterian father.—Impartial Account of Transactions in Scotland.

‡ Ibid., ii. 700.

CHAPTER II.

Sir John Dalrymple, entering into King James's views as to the dispensing power, is suddenly promoted to be King's Advocate—Royal Proclamations suspending the penal laws against Nonconformists —Moderation of the new Lord Advocate—He is withdrawn from his office, and raised to the bench.

King Charles II. had in the mean time gone to his account, having recourse in his last moments to the spiritual consolations of the Romish Church. The Duke of York had succeeded to the throne, openly avowing, or at least not caring to conceal, his intentions of restoring that Church and its votaries to power and place.

Striking changes succeeded each other at this time with marvellous rapidity. Coming after the passages in his life which have been mentioned in the previous chapter, the change that now took place in the fortunes of Sir John Dalrymple is like the shifting scene of a play. In January 1686 we have seen him liberated with difficulty from confinement in a common prison; in December of the same year he left Edinburgh for London; in the ensuing month of February he came back King's Advocate.* The

* Lord Fountainhall's note on the occasion is worthy of transcription :—

cause and motive of this sudden preferment was soon made manifest. The king was now pressing with all his might the recognition by his subjects of the power claimed by him of dispensing with the test oath and penal laws, then regarded as the great safeguard of Protestant orthodoxy as against Roman Catholics and all nonconformists. The Protestantism of the Lord Advocate, Sir George Mackenzie, revolted at this stretch of prerogative. Compounding for the sins he had so long winked at by resolutely condemning the dispensing power, he retired from office, and was succeeded by Sir John Dalrymple, whose easy views on the subject of forms of religion enabled him, probably without much scruple of conscience, to enter into and comply with the intentions of the king.

His assistance in carrying into exercise the perilous dispensing power, which bore upon its face a show of liberality, but was distasteful to the great majority of the nation, was very soon required. By successive royal proclamations* following immediately upon Sir

"*February* 14, 1687.

"Sir John Dalrymple, now King's Advocate, arrives; lately twice in prison as a malefactor, and in very bad circumstances with the Government, he comes from London to Edinburgh. His coach broke with him at Tranent. He has got a precept from the king for £1200 sterling, whereof £500 was his fine which Queensberry and Claverhouse exacted from him three years ags; the other £700 was for his charges in this last journey to and from London, and for loss of his employment during that time. He has brought with him also an ample and comprehensive remission of all crimes to his father, Lord Stair, to his mother, his brother and sisters (particularly for their reset and converse with traitors), and to his little son who accidentally shot his brother."—Hist. Notices, ii. 783.

* In February and June 1687.—Collection of old Tracts in Advocates' Library, Edinburgh.

John Dalrymple's accession to office, the penal laws against nonconformity were suspended in Scotland, and free exercise was allowed to all persons of their respective worships, rites, and ceremonies, in private houses and chapels, while at the same time "field conventicles" were strictly prohibited. The proclamation in June dated at Windsor, superscribed by the king and countersigned by the Earl of Melfort, bears to have been previously read in the Privy Council of Scotland, the Lord Advocate being one of the members of Council present, and was published with all due formality.

During the year that he continued in this office, it fell to Sir John Dalrymple on more than one occasion to institute prosecutions against holders of "field conventicles" and those rebellious "hill-men," for protecting and harbouring whose fellows and friends his father and himself had formerly been prosecuted. We find him a few months after his appointment indicting certain persons for being present at the battle of Bothwell Bridge, the prisoners being defended by Sir George Mackenzie, who successfully maintained for the defence that rendezvousing without arms was not relevant to infer treason unless a treasonable design was expressed.* It is generally agreed that what punishments of nonconformists took place during his tenure of office were of a lenient character, and that he discharged his duties as public prosecutor with a moderation unknown in the days of his predecessor.† He may possibly, indeed,

* Fount., Hist. Notices, ii. 794.

† Impartial Account of Transactions in Scotland; Anonymous Life of the Second Earl of Stair; Fount., Hist. Notices, ii. 820. It is sur-

have acted with a moderation that did not suit his masters, for in the commencement of the following year the situation of King's Advocate was again bestowed upon Sir George Mackenzie as the more serviceable agent of the Government, while Sir John Dalrymple was made Lord Justice-Clerk on the death of Sir James Foulis in January 1688.

In July of this year Sir John became proprietor by purchase from John Lord Bargany of the estate of Castle Kennedy, which must have added considerably to his consequence in the south of Scotland. He does not seem ever to have passed much of his time at the castle, which had great attraction in point of scenery, and became afterwards a favourite residence of his son, the Field-Marshal Stair. He was at Castle Kennedy in the month of September, a few weeks prior to the landing of the Prince of Orange at Torbay.

His appointment in the previous year as Lord Advocate simultaneously with the relaxation by royal proclamation of the penal laws against nonconformists was, to all appearance, a sudden stroke of policy. With the king's known intentions in favour of Popery, and the country in an uneasy state of disaffection, James's cabinet in London were playing a desperate game, and had recourse to unusual measures. Sir John Dalrymple's preferment is stated, on good authority, to have been bestowed on

prising that in an able Church History like that of Dr Cunningham, so unfounded an observation should be made with reference to the Master of Stair, when made Secretary of State in 1692, as that "his hands were red with the blood of the saints"! He had enough to answer for in reference to Glenco.—Church History of Scotland, ii. 299.

him at the instance of the Earl of Sunderland, then president of the Council and First Minister of State, with the view of a union being thereby effected between the Presbyterian and Popish parties in Scotland: "Impenetrable in his designs" (says the author of the Memoirs of Great Britain), "but open, prompt, and daring in execution, Sir John Dalrymple acted in perfect confidence with Sunderland, to whom he was inferior in nothing and superior in eloquence." *

* Dalrymple's Memoirs of Great Britain and Ireland, ii. 72.

CHAPTER III.

Revolution of 1688—*Sir John Dalrymple actively espouses the cause of William of Orange—Is distinguished in the Scottish Convention of Estates, and takes a principal part in the measures for settling the Crown—Is made Lord Advocate—Manages for the Government in the Convention Parliament—Difficulty of his position—Votes of the Parliament—Unpopularity of the Lord Advocate with the "Club"—Jacobite plot.*

In November of the same year in which Sir John Dalrymple took his seat as Lord Justice-Clerk in the Court of Justiciary, and as judge in the Court of Session, came the Revolution. Upon the news of the landing of the Prince of Orange and of the disorganised condition in England of the adherents of James, the friends of constitutional government in Scotland, including all the Presbyterians, and even many Episcopalians, took measures, cautiously at first, to promote the cause and favour the pretensions of William. "Viscount Tarbet* and Sir John Dalrymple, Lord Justice-

* Sir George M'Kenzie of Tarbet, a wily politician, and manager in Scottish affairs during the last years of Charles II. and the short reign of his successor, had been raised to the peerage by James, and held the office of Lord Clerk Register when the Revolution took place. Lord Tarbet was in the course of three years restored to this office by King William, which he exercised not without suspicion of tampering with the records of Parliament. He was made Earl of Cromarty by Queen Anne. His letters among the Lauderdale Papers in the British

Clerk" (says Colin Lord Balcarres in his Memoirs) "were thought to have the greatest share in this early appearance for the Prince of Orange's interest." It was probably upon their motion in the Privy Council that the resolution was adopted of disbanding the Government troops in Scotland; to which the Chancellor, the Earl of Perth, consented too easily for himself and his master's cause, and which would not have been so readily carried into effect but for the strong current of public feeling in the southern and western shires in favour of the new settlement.

The officers of state and judges now ceased to exercise the functions to which they had been appointed under the late king, and Sir John Dalrymple, without any apparent scruple, espoused the cause of William of Orange. A political crisis, which, to most men with antecedents such as his, would have been total extinction, was to him the opening of a new career. He was in an element that suited him, steering his bark on the troubled waters so as to place it on the crest of the incoming wave. As the weeks passed on from the winter of 1688 to the spring of 1689, he took part more and more vigorously in the measures adopted for carrying out the Revolution Settlement; and when the time arrived for calling the Scottish Convention of Estates, he was active in promoting the election of representatives from the counties and burghs in the interest of the new Government.*

Museum may be distinguished from those of Sir George Mackenzie of Rosehaugh, King's Advocate, by the variation in the spelling of the "Mac."

* Life of the Rev. W. Carstairs, prefixed to the Carstairs State Papers. Lord Balcarres, in his Memoirs, says that it was the Prince of

The Convention met in March under the presidency of the Duke of Hamilton, who had been a member of James's Privy Council. Sir John Dalrymple sat in it as commissioner for the burgh of Stranraer. His political talents and power of debating soon brought him to the front in an unruly assembly actuated by heterogeneous views and motives. A few days after their first meeting we find him put upon the committee "for securing the peace of the kingdom," and upon another important committee "for settling the government," consisting of twenty-four representatives of the three Estates.* On this committee the important duty was devolved of constitutionally disposing by a legal instrument of the Scottish crown; and by its members the celebrated resolution was framed enumerating as its groundwork the various unconstitutional acts of King James, and declaring that he had thereby *forfeited* his right to the throne, which had consequently become vacant. Sir John Dalrymple is understood to have taken the chief part in preparing this resolution and carrying it by a vote of the House.† The

Orange's desire (probably on the advice of Lord Stair) that all Protestants, without distinction, should have a vote in the elections; and by this, and many of the Episcopalian party having scruples to meet upon the prince's orders, a great addition to his party was made from the burghs. The proceedings of the Scottish Convention and Parliament will be referred to in the text only in so far as Sir John Dalrymple is particularly concerned in them.

* Act. Parl. Scot., ix., March 14 *et seq.* At the meeting of the Convention there were present (in one Chamber) fifty-eight peers, with two archbishops and seven bishops, fifty-six commissioners for shires, and sixty-five commissioners for burghs.

† Balcarres's Memoirs; Macaulay's England, iii. 286. The theory embodied in this resolution, of James having by his acts and deeds *forfeited* the crown, may possibly have been suggested by the Scottish

pure Jacobite element in the Convention having been eliminated by the previous withdrawal of Viscount Dundee, Lord Balcarres, and several others, and by the action of the committee on controverted elections, the minority against the resolution was reduced to five.

Some days after this vote was passed, Sir John Dalrymple's power of argument was signally displayed in the debate and vote on the proposal for a Treaty of Union, a matter prominently referred to in William's letter to the Convention, but as to which the English Parliament showed at this time no forwardness in seconding the views of the king.* Lord Tarbet and Dalrymple counselled their countrymen upon this occasion to make the settlement of the crown and the union of the kingdoms go hand in hand; but the proposal was dropped for the present, to be revived under better auspices in the succeeding reign.

The chief duty which fell to the committee for settling the government was to prepare a solemn Act settling the crown upon William and Mary, and a written instrument "to be offered with the crown," for securing the people from the grievances affecting them. This task was carefully performed.

The king and queen having been proclaimed at the Cross of Edinburgh, another Act was passed by the Convention containing the form of the oath to be administered to them "at their acceptance of the crown." The concluding paragraph of the oath was,

law of entail recently established under the Act 1685, c. 22, whereby an heir in possession of an estate under a deed of entail contravening by his acts and proceedings the conditions of the entail, thereby forfeited the estate.

* Melvill Papers; Culloden Papers, Addenda, p. 318.

"And we shall be careful to root out all heretics and enemies to the true worship of God that shall be convict by the true Kirk of God of the foresaid crimes out of our lands and empire of Scotland."

The Convention then addressed a letter to William, with the offer of the crown, at the same time nominating the Earl of Argyle, Sir James Montgomery, and Sir John Dalrymple, as commissioners from the three Estates, to convey the letter to William and Mary, along with the constitutional instruments already mentioned, and to see that these were sworn to and signed by them; after which the commissioners were to return as soon as possible.* The Estates at the same time authorised the Duke of Hamilton to grant from the public revenue £300 sterling to the Earl of Argyle, and £200 to each of the other two, for defraying the expense of their journey to London.†

The constitutional ceremony, to watch the due performance of which was the duty assigned to the commissioners, was gone about with all the pageantry of state. "On the 11th of May" (in the picturesque language of Lord Macaulay),‡ "the three commissioners came to the council-chamber at Whitehall, and thence, attended by almost all the Scotsmen of note who were then in London, proceeded to the banqueting-house. There William and Mary appeared seated under a canopy. A splendid circle of English nobles and statesmen stood round the

* There was a division in the Convention whether the commissioner representing the burghs should be Sir John Dalrymple or Sir William Hamilton of Whytlaw, the vote being carried in favour of the former by a small majority.—Culloden Papers, p. 320.

† Act. Parl. Scot., ix. ‡ History of England, iii., chap. 13.

throne; but the sword of state was committed to a Scottish lord, and the oath of office was administered after the Scottish fashion. Argyle recited the words slowly. The royal pair, holding up their hands towards heaven, repeated after him till they came to the last clause. There William paused. That clause contained a promise that he would root out all heretics and all enemies of the true worship of God. . . . 'I will not' (he said) 'lay myself under any obligation to be a persecutor.' 'Neither the words of this oath,' said one of the commissioners, 'nor the laws of Scotland, lay any such obligation on your Majesty.' 'In that sense, then, I swear,' said William; 'and I desire you all, my lords and gentlemen, to witness that I do so.'" *

The precision and ready aptness of the observation so relieving the royal scruple, which is stated to have been made by one of the commissioners, together with its reference to the laws of Scotland, would lead one to infer that it was made by Sir John Dalrymple. The king's spirit of toleration was in advance of his age and of the opinions of his Presbyterian subjects; and the events of the years immediately succeeding will show how William's attempts in accordance with this spirit were seconded by

* From a letter of Sir John Dalrymple to Lord Melvill, July 12, 1689 (Melvill Papers), the commissioners appear to have differed as to the order in which the offer of the crown, contained in the letter of the Estates, and the tendering of the oath and declaration of rights, should be made, Dalrymple being of opinion that the offer of the crown should take precedence of the reading and acceptance of the instruments of government. The Convention (to judge from the various Acts passed on the subject) wished the offer of the crown and the tender of the Declaration and Oath to be *simultaneous*, which involved a difficult if not impossible procedure.

Dalrymple, to the great diminution of the popularity of both.

In the course of a few days a letter from the king was addressed to the Convention of Estates, referring to the proceedings which had just taken place at Whitehall, and expressing, in general terms, his Majesty's intention to assist in making such laws as may secure the religion, liberties, and properties of the people, and prevent or redress whatever may be justly grievous to them, and authorising the Convention, hereby turned into a Parliament, to adjourn itself till the 5th of June next.*

The principal offices of state were now to be filled up. Melvill, a "canny" steady-going Presbyterian lord, was made sole secretary for Scotland, much to the chagrin of another expectant, Sir James Montgomery, who was offered, but declined, the situation of Lord Justice-Clerk, his disappointment and impetuous temper causing no slight annoyance to the Government. Sir John Dalrymple became Lord Advocate, and Sir William Lockhart Solicitor-General. While the latter attended to the court business, the lord Advocate's sphere was political, managing for the Government in Parliament, where he led in the debates with an ability equal to the occasion.

His position was not a bed of roses. Exclusive altogether of the avowed adherents of the late royal

* Act. Parl. Scot., ix. The date of the royal letter is May 17, 1689. Lord Macaulay is not quite accurate in stating that the Convention, after appointing the three commissioners to carry the instrument of government and the tender of the crown to London, then adjourned for a few weeks. The adjournment did not take place till the receipt by the Estates of the king's letter as to his having accepted the crown and taken the oath, &c.

family, a numerous party existed among the favourers of the Revolution Settlement, to whom the promotion of Sir John Dalrymple and the return of his father to the chair of President of the Session were as gall and wormwood. These were chiefly adherents of the old Covenanters and Cameronians, who recalled, without any great stretch of memory, a time when the rule of Lauderdale in Scotland was countenanced by the lord president Stair, and when the Popish views of James in dispensing with the penal statutes were furthered by the opportune compliance of the king's advocate, Sir John Dalrymple.

The promotion of the latter in King William's Government cannot perhaps be matter of surprise, considering his powerful family connection, his acknowledged superiority and skill in debate, and the circumstance (which must have weighed in London) of his having been selected by the Convention to be one of the three commissioners for conveying to William and Mary the offer of the crown. But not the less virulent was the opposition he encountered in Parliament when he came to lead for the Government, and was called upon to oppose the proceedings and votes of what very soon proved to be a majority of the House.

The first session of the Convention Parliament, which met on the 5th of June 1689, presented the remarkable phenomenon of a government just brought into power by an apparent majority of the people of Scotland being, nevertheless, almost always in a parliamentary minority. The king and the Secretary Melvill were in constant communication with the royal commissioner (Duke of Hamilton) and the lord

Advocate; and four Acts (besides two formal ones) were all the commissioner was empowered to touch with the sceptre (the Scottish mode of giving the royal assent) before the prorogation of the House.* No act of supply was passed, and the settlement of the Church government was postponed.

The opposition was concentrated not so much in the few Jacobites still to be found in Parliament as in a formidable knot of members called "the Club," at the head of which were the factious and dangerous Sir James Montgomery and the Earl of Ross, both uncompromising enemies of Sir John Dalrymple and his father. They were supported in most of their votes by Sir Patrick Hume and other Presbyterians.†

Five votes on important questions were carried by the Opposition against all the efforts of Dalrymple and the Government: 1st, a vote declaring that it was the privilege of Parliament to nominate the Committee of Articles for preparing motions and overtures to be brought before it, excluding therefrom the officers of state, unless they were chosen;‡ 2d, a vote abrogating the statute of Charles

* These Acts respectively declared the meeting of Estates a Parliament, recognised the royal authority of William and Mary and prescribed the Oath of Allegiance, abolished Prelacy, and rescinded the forfeiture of the late Earl of Argyle. The only supply hitherto voted for the service of the new Government was a sum of 280,000 pounds Scots by the Convention of Estates.

† "The Club meets at a tavern" (the Advocate writes to Lord Melvill) 'twice a-day, and orders all the north-country members; and all the 'malignants,' for fear, are come into the Club, and they vote all alike."—June 25, 1689; Melvill Papers.

‡ Without agreeing to everything proposed by this vote as to the Articles, the Government afterwards conceded a less close and more satisfactory constitution of the Committee of Articles, according to which the officers of state were to be present in the committee, but

II., 1669, which asserted the king's supremacy over all persons and in all causes ecclesiastical; 3d, a vote as to persons not to be employed in public trusts, levelled principally against the Advocate, as having been an instrument of the former Government in matters declared to be "grievances;" 4th, a vote concerning the power to be exercised by Parliament in the matter of judicial appointments, mainly directed against Sir James Dalrymple, now about to resume his office of president of the Session; 5th, a vote ordaining the Presbyterian ministers still alive who had been thrust from their churches to be restored.

With reference to these votes, and the state of matters in Parliament, Sir John Dalrymple wrote to Lord Melvill,—"By the enclosed, your lordship will easily observe whether we be more inclined to settle the Church or pull down the State. . . . Each day we are kept together it will be at the expense to the king of a new prerogative." *

Towards the close of the session an Address to the king, recapitulating these votes, and giving a very

not to vote. This improved organisation was provided for in the ensuing session, by the Act 1690, c. 3. See, on this subject, Sir John Dalrymple to Lord Melvill, July 2, 1689—Melvill Papers.

* July 20, 1689—Melvill Papers. "Now began" (says Forbes of Culloden, in a paper "On the State of things in Scotland after the Revolution") "every man to see that the Estates of Scotland were wise behind the hand, and that they had not made their bed as they wished to lie down. Instead of remedy, the first expressions were but mere animosities against Sir John Dalrymple and his father, with some resentment against the Lord Melvill; but upon soberer thoughts it was projected to divide Lord Melvill, who was an honest, well-principled, suffering man, from the interests of my Lord Stair, who had been in an evil government so long, and had left his son behind him in it until the last." Forbes was a member of the Presbyterian opposition in Parliament.

broad hint as to the reason of the delay of the supply asked for by the royal commissioner, was signed by the members of the Opposition, now a majority of the House. The address besought the king to take such courses as he should think fit for passing the foresaid resolutions into Acts and redressing all other grievances.

The royal consent being refused in the mean time to all the five votes, the Crown and the Parliament were thus fairly in collision; but William was in no mood to change his minister, though his own popularity and hold of the Presbyterian interest were temporarily affected by the determined set which was made against Sir John Dalrymple. He preferred adjourning the Parliament.

Before the adjournment, the partisan warfare against the Advocate came to a crisis of which the consequences might have been serious, had he not extricated himself with his usual ability. A question was raised by Sir James Montgomery and the Club, whether the commissioners sent by the Convention to make offer of the crown had exactly obeyed their instructions. "This day" (Sir John Dalrymple writes to Lord Melvill)* "we met, full of humour. I was designed to be sent to the castle—wagers five to one upon it. I was desired to withdraw, but, being innocent, I did rely upon God's providence. . . . The matter being charged warmly by Annandale, that I had proposed that the king should take the coronation oath before the "grievances" were read, and that I meant not to include the grievances in his oath, but to leave the nation in mercy that he

* July 12, 1689—Melvill Papers.

might redress these or not as he pleased; this was found a crime, because the Instructions did place the oath after the grievances. I did produce the Act of the Convention sending us three up for each Estate, bearing expressly to offer the instrument, the oath, and the grievances in the last place. This did so turn the tide, that now my colleagues would give anything for their exoneration."*

The Parliament was prorogued by the royal commissioner on the 5th of August, the settlement of Presbytery being allowed to stand over till next year. The chronic ferment which characterised its proceedings may be accounted for not only by the factious discontent of the Presbyterians but also by the stirring events of the war in the Highlands, the battle of Killiecrankie and the death of Dundee, which took place about a fortnight before the prorogation. What with Jacobites, Cameronians, and disapppointed politicians, there were within the Parliament itself sufficient elements of faction to give rise to a very large amount of political excitement.

The party of the Club kept alive their agitation of the public mind by formally presenting, on the 15th of October (by the hands of Sir Patrick Hume), to the king, at Hampton Court, the Address already mentioned. It was but coldly received.†

In connection with these proceedings, the pamphlet (referred to in the Life of Viscount Stair) vindicating the votes of the Parliament came out before

* Compare, as to this, the Act of Nomination and the Instructions to the Commissioners, stat. 1689, c. 28 & 30. The dispute appears frivolous, but not less so than parliamentary disputes in modern times have sometimes been, where party feeling was the chief motive.

† Culloden Papers, p. 325.

the close of the year. It was made the vehicle of much personal abuse of Sir John Dalrymple and his father, too racy to be introduced in the address; while the government of William was reviled and threatened in very plain language.* The Advocate left the pamphlet to be answered by Lord Stair, and no further notice was taken of it than to prevent a proposed reprint in Edinburgh.

That Sir John Dalrymple, though an able parliamentary leader and adviser of the Crown, was unpopular with the party on whom the Government had at this time chiefly to depend, is undoubtedly true; and his employment at all by King William involves a political question into which it is unnecessary to enter. His case, however, was one of very peculiar circumstances; and it is doubtful if any other arrangement could have been made with safety to the rights and prerogatives of the Crown as recognised and understood by the English Parliament and by the king himself. There were startling inconsistencies in his career, but his family was powerful and his ability conspicuous. He was now proving himself a faithful minister in the service of the king, to whose interest he was bound by every possible tie; and no suspicion of intrigue or duplicity with reference to his royal master can ever attach to his memory.†

* "The cobbler's awls and ends" (says this Junius of the seventeenth century) "are unsuitable furniture in the painter's shop; neither will they ever serve this king with faithfulness in his vindicating the kingdoms into liberty who were the sworn vassals to his predecessors' despotical will, and their tools for oppressing and enslaving the nations."—Votes and Proceedings of the Parliament Vindicated, p. 21.

† In a document discovered in the course of the inquiries as to the Jacobite plot of 1690, Sir John Dalrymple appears as one of six persons excluded from the general indemnity proposed to be granted

In the course of the winter information reached the Government of a Jacobite plot or conspiracy to bring back the late king. Their attempts to oust the Dalrymples and bring about a change of ministers in Scotland having failed, certain discontented chiefs of the Club proceeded, with mischievous intent, to take up the cause of James. After issuing the pamphlet already mentioned, they began hatching a plot against the Government. Sir James Montgomery, the Earls of Ross and Annandale, Ferguson "the Plotter," and an Englishman called Neville Payne, were principally implicated.* The plot was not allowed to ripen into execution; and in the spring and summer of 1690 its details, such as they were, came to light by the plotters betraying each other. Its professsed aim being a counter-revolution, the inquiry was transferred to London, where it caused the Cabinet and the queen, while William was engaged in Ireland, no slight uneasiness.† Through the influence of Melvill the Scottish conspirators were very leniently dealt with; but Neville Payne, who had crossed the Border in order to avoid a prosecution for treason in England, was arrested in Scotland, and, by express instructions from the king and Melvill, subjected to torture

by James, the others being Lords Melvill and Leven, General Mackay, General Douglas, and Bishop Burnet.

* The well-known case of Lord Preston and Mr Ashton (January 1690, State Trials) may be taken as proof of the existence of another plot in England, in the month of December 1689, to restore the Stuarts; but there appears no evidence connecting it with the Scottish plot.

† Narratives (by the Queen) as to Lords Ross and Annandale, July 1690, and Earl of Annandale's Confession—Melvill Papers; Balcarres's Memoirs of the Revolution; Burton's Scotland.

before the Privy Council. He made no additional revelations; and his treatment and behaviour had the salutary effect of disgusting most of the members of the Council with the use of the thumbikins and boot.*

The proceedings for tracing out this plot were taken charge of by the Solicitor-General Lockhart, the Lord Advocate meanwhile making diligent preparation for the ensuing session of Parliament. "When the [Court of] Session sits down" (he wrote to Lord Melvill),† "and people return after they are spoken with particularly, your lordship shall know what I expect from every member of the Parliament." The Highland clans being still intractable, he recommends the placing of a garrison of troops at Inverlochy;—"In winter the Highlanders cannot stay together, their garb rendering them incapable of remaining in the fields in frost and snow, nor can they scamper to the hills. The Lowlanders, being clothed, can endure more cold in winter; whereas in summer the Highlanders can march and fatigue more in one day than the Lowlanders can do in three."

* Earl of Crawford to Lord Melvill, December 11, 1690—Melvill Papers.

† January 10, 1690.

CHAPTER IV.

Intention of the king to open the Scottish Parliament in person—State of parties — Management of the Parliament — Establishment of Presbytery—Part taken in it by Sir John Dalrymple—First General Assembly of the Kirk after the Revolution.

In the spring of 1690 it was the king's intention to preside in person over the deliberations of the Scottish Parliament—the Lord Advocate anticipating no difficulty in securing a majority for Government on the supposition of William visiting Scotland. "I know" (he writes to Lord Melvill)* "that pains have been taken to engage the Cameronites [Cameronians] and to stir up the country; but it will not do. . . . Indeed it is inconceivable how bold and restless they [the opposition] are, and what ill views they give of all the king's actings, which retards and intimidates many of us; but still I am satisfied the great number of persons employed in the Government keeps friends;† and if the north-country commissioners do hold out as well this next session for the king as they did last, I do not fear: but there is great pains taken to persuade the Cavalier party that they cannot be

* Feb. 4, 1690—Melvill Papers.

† As many offices as possible were put in commission, and so the Government patronage was extended and aspirants to office gratified.

safe nor entertained by King William, and I find that Athole and all his people are directly in the Club; so in a short time they will be open Jacobites. I understand the queen is not to come down, so it is not possible the king can be crowned with formality or solemnity; and, in my opinion, there is nothing of that kind more requisite than that he do put on the crown the first day he appears in Parliament and makes his speech. At other times he will wear his ordinary habit; but it is our custom, and very necessary, that he be always present on the throne at all the diets of Parliament." The Advocate then recommends that, as there is no time to provide robes or clothes, the king should signify his wish to have the Scottish Sumptuary law observed;* concluding with the remark that the spring season was the very worst of all for meat or the appearance of the country; but if things went well, he should digest the point of credit the easier.

Sir John Dalrymple's patriotic doubts whether his countrymen would make a good show upon occasion of the visit of the king to Scotland, accompanied by a retinue of English lords, were not destined to be put to the proof, important affairs preventing William from prosecuting his design. "Special instructions," prepared no doubt in concert with the parliamentary manager for the Government, were issued for the guidance of Lord Melvill, the new Commissioner to the Parliament. His lordship was to inform himself how the members stood affected; with advice of the Privy Council to take measures for securing the Gov-

* This was the statute of Charles II., 1672, "Concerning Apparel," which provided against extravagance in dress.

ernment, and, if necessary, to make use of the warrants directed by the king to the commander of the forces in Scotland; to deal with the leading men to concur for redress of grievances, and with all other persons whom he thought might be serviceable, and what employments, money, or other gratifications he should promise would be made good: the Presbyterians were to be assured of the king's kindness for them, and his expectation that they were to influence his subjects of their persuasion to fidelity and reliance on his goodwill.

These Instructions, which are given at length in the Melvill Papers, do not impress us with so exalted an opinion of the monarch and ministers who were ushering in a new order of things as some ardent admirers of the Revolution Settlement would desire; but a practical solution of existing difficulties was absolutely necessary, and for that purpose they were probably not ill adapted.

With the prospect of a change of Church government in Scotland, the king, whose affection for Presbytery was more politic than heartfelt, saw clearly that the utmost circumspection and caution were necessary in his relations with the two Parliaments. He therefore postponed the meeting of the Scottish parliament till later in the year.*

William set out for Ireland in the beginning of June, leaving the queen in London. Embarking on board the fleet from the coast of Cheshire, after a short sojourn in the quiet bay of Loch Ryan, he crossed the channel to Carrickfergus, and, in the course of a few weeks, fought the battle of the Boyne.

* The king to Lord Melvill, March 20, 1690—Melvill Papers.

When the Scottish parliament met, a change appeared to have come over its spirit.* To whatever cause we are to attribute the change—whether to dissensions and a feeling of insecurity among the plotters of the Club, or to the action taken by Melvill under the royal Instructions—the lord Advocate and the Government experienced much less opposition than in the previous year, and no serious collision took place between the votes of the Parliament and the Crown. The opening speech of the royal commissioner and the king's letter were both conciliatory. Lord Melvill stated that the parliament would have been honoured with the presence of the king had not the meeting of the English parliament and the state of public affairs prevented it. He counselled moderation and the laying aside animosities and piques, and said that his Majesty now offered redress to the oppressed, pardon and peace to submitting enemies, and protection to all good subjects.† A variety of important Acts were passed, chiefly in relation to the Church.‡ At the very commencement of the session

* Sir John Dalrymple having now a seat in Parliament in right of his office of Lord Advocate, his burgh of Stranraer was represented by Sir Patrick Murray.

† Collection of pamphlets, Advocate's Library.

‡ The Jacobite Lord Balcarres refers to this session of Parliament in the following terms: "Never men made a more miserable figure in any assembly than your [King James's] friends did in this, after they saw themselves abandoned and outvoted in everything, and had nothing to do but sit and hear Duke Hamilton bawl and bluster after his usual manner, and Sir James Montgomery and Sir John Dalrymple scold like watermen. These two were the chief managers of each party—Sir John pretending to defend the king's prerogative, and Sir James the liberty of the subject and the claim of right, which he did with great force and eloquence, although a country gentleman, not used to great affairs; and if he had not been opposed by the great abilities of Sir John Dalrymple, and but ill sustained from the indiffer-

three of the five votes or bills passed by Parliament in the previous session, but not assented to by the Royal Commissioner, were touched with the sceptre, now in the hand of Melvill—viz., the bills for excluding the royal supremacy over all persons and in all causes ecclesiastical, for restoring the outed Presbyterian ministers, and for reorganising on an impartial basis the Committee of Articles.

The great measure of the year was the statute establishing Presbyterian Church government by Presbyteries, Synods, and General Assemblies. At the instance of the Earl of Crawford, a clause appointing the first meeting of the General Assembly of the Church to be held at Edinburgh in October (1690) was inserted in the Act.*

The settlement took place mainly upon the footing of the statute establishing Presbytery in 1592, passing over in a great measure the more recent settlement of 1649 and previous years. This settlement on the basis of 1592 was supported with great power of reasoning and eloquence by the lord Advocate, against the insidious attempts of Sir James Montgomery and others to throw it out as not expressly recognising the Covenants and the standards of 1649. It must have astonished those

ence of your friends, he had undoubtedly put them to great straits."—Letter to James VII.; Memoirs, p. 59.

* The clause bears that, "in pursuance of the premises, their Majesties do hereby appoint the first meeting of the General Assembly," &c. When the draft of this statute (1690, c. 5), as agreed to by the Parliament, was submitted to the king, he was dissatisfied with the reference to Prelacy in the preamble, and the assumed claim of Presbytery to be the only true Church of Christ within the kingdom of Scotland, and he sent to Lord Melvill a paper of "Remarques" on these points, which is given in the Melvill Papers, p. 436.

who were aware of the part taken by Sir James in the Jacobite plot so recently discovered, to hear him unctuously discoursing in parliament upon the National Covenants; being himself allowed, by the indulgence of Lord Melvill and the Scottish administration to go scot-free, while poor Neville Payne was committed to prison, and before the close of the year tortured with the thumbikins and boot, in respect of his concern in the very same plot.

Sir John Dalrymple had in the previous year expressed himself strongly in favour of the establishment of Presbytery proceeding upon the statute of 1592, as being what a majority of the parliament could agree to;* but the standards of 1649 were by no means ignored altogether in the new Act. It adopted the Westminster Confession of Faith instead of Knox's Confession; and although it authorised no directory for public worship, it sanctioned by implication the general directions contained in the 21st chapter of the Westminster Confession as to the mode of worship being conform to Holy Scripture, pointing no doubt (in the case of a Presbyterian establishment) to such mode of worship being the usual Presbyterian form.

Another departure from the settlement of 1592 was the statute, passed later in the year, for transferring the patronage of churches to the Heritors and Kirk-sessions, under certain conditions of approval by the congregation. The passing of this Act was a concession to the Presbyterian party, called for by the urgent condition of public affairs, and was generally

* Letter to Lord Melvill, July 7, 1689—Melvill Papers, p. 148.

believed to have been contrary to the inclination of both the king and the Advocate.*

Immediately on the passing of the statute settling the Church government, an Act was passed for a supply to their Majesties of £162,000, to be raised out of the land-rent from the shires and burghs; for the collection of which an extensive nomination of Commissioners of Supply, with as little reference as possible to party distinctions, was made for all the counties of Scotland.†

The success of William in Ireland, and his subsequent return to England, materially strengthened the hands of the Government. The Privy Council of Scotland addressed to him upon this occasion a congratulatory epistle, to which is appended the signature of Sir John Dalrymple, now, by his father's elevation to the peerage, bearing the Scottish title of Master of Stair. He had, after the adjournment of Parliament, still the difficult task before him of observing the proceedings of the General Assembly of the Kirk. The Assembly met in October, Lord Carmichael (afterwards Earl of Hyndford) being the royal Commissioner; while one of their own number was their preses or "moderator." The king's letter, presented by the Commissioner, counselled a calm

* Balcarres's Memoirs, p. 60; Cunningham's Church History of Scotland. It may be inferred that the king's private adviser in Scottish ecclesiastical matters, Mr Carstairs, was in favour of this change in the law, from the fact of his being one of three clergymen of the Church of Scotland who signed a representation to the House of Lords, in 1712, against the Bill for restoring patronages brought in by Queen Anne's ministers.—Carstairs State Papers, p. 796.

† Stat. 1690, c. 6. This nomination of Commissioners of Supply would, according to the practice of the time, be made by the Lord Advocate, under the direction of the Privy Council.

and peaceable procedure, and concluded thus:—"Moderation is what religion enjoins, neighbouring Churches expect from, and we recommend to you." The Assembly's provisions for the order and discipline of the Church, and as to a portion of the Episcopalian incumbents being admitted into it on signing the Confession of Faith and adopting the Presbyterian discipline, showed more regard to the king's recommendation than was immediately afterwards evinced in practice. Having sat about a month, the Assembly was dissolved in his Majesty's name by the Commissioner, and appointed to meet again in November 1691.*

* Melvill Papers, pp. 567, 569, 572; Cunningham's Church History, ii. 294.

CHAPTER V.

Sir John Dalrymple, now Master of Stair, becomes Secretary for Scotland—Measures for restraining the hostile depredations of the Highlanders—Secretary Stair accompanies the king to the Continent—Proclamation of indemnity and pardon to the Highlanders upon certain conditions—The Macdonalds of Glenco, too late with their submission, are out of the letter of the proclaimed pardon—Proceedings thereupon—Tenor of the letters of the Master of Stair—King William's Instructions to the military officers—Was the atrocity of the affair of Glenco realised by the parties to it?

In the beginning of 1691, the Master of Stair was in London, preparing to exchange the office of Lord Advocate for the exclusively political office of Secretary of State for Scotland. To apologise for past heats in debate, he writes to the Duke of Hamilton, referring to the part he had taken in parliamentary debate with his Grace, that any conflict he may have had never went beyond words, and was not the effect of malice or design, but arose from the different apprehensions of the ends or methods they each pursued,—the office of King's Advocate obliging him "to challenge everybody without distinction that had not our word."*

Before the end of January, William, accompanied

* Jan. 13, 1691—Sir J. Dalrymple's Memoirs of Great Britain.

by many of the English nobility, and by the Master of Stair as the Scottish secretary in attendance on himself, revisited his native country of Holland.* He was received at the Hague with enthusiasm, and set himself immediately to infuse new spirit into the operations of his continental allies. Secretary Stair (whose letters in the Melvill Papers show him entering with zest into the military proceedings of the campaign) directed the chief part of the Scottish business, under the eye and supervision of the king. "The new prime minister for Scotland" (says Lord Macaulay, referring to this recent change) "was the able, eloquent, and accomplished Sir John Dalrymple." In the middle of February he wrote to Melvill, from the Hague, that the king had just signed two letters, one to the Commission or standing committee of the General Assembly of the Kirk (which will be noticed in the next chapter), and another to the Privy Council in relation to the fortifying of Inverness.

The second of these despatches had reference to the measures in course of being adopted for restraining the depredations of the Highlanders, and bringing about the pacification of the Highlands. With a view to this object the parliament had already passed various Acts; and now that the affairs of the Church were in so far settled, this was the matter of chief interest to be attended to in Scotland, and to which the efforts of the king and the Master of Stair were mainly directed. The Earl of Breadalbane,

* When the king was abroad, a Joint-Secretary for Scotland remained at home. Lord Melvill was at first the joint-secretary with Dalrymple, but was soon allowed to exchange it for the keepership of the Privy Seal, while James Johnston (of Warrieston) became joint-secretary with the Master of Stair.

a Highland lord imbued with the sentiments and somewhat irregular impulses of a powerful Highland chief of that time, having more clansmen and followers on his hills than guineas in his purse, had in the previous year received a commission from Government to assist in promoting so desirable an end. There was, at the same time, intrusted to him a sum of £12,000, to be disposed of by himself in his dealings with the Highlanders.

During the first six months of the year 1691, the Highland districts in the neighbourhood and to the north of Fort William were in a feverish and uncertain state; while the Government officers in command of troops were receiving orders from the Privy Council and the Secretaries of State now to act with severity against the clans who refused to take the oath of allegiance, and now to hold their hand.* On the 30th of June, as a result of the negotiations of Lord Breadalbane, what was called a "cessation of hostilities for a stated time" was agreed to between two general officers of the late king (Buchan and Sir George Barclay), acting on behalf of the clans on the one part, and Lord Breadalbane for the Government on the other part, whereby a mutual forbearance from all acts of hostility and depredation was consented to until the first of October next.† Following upon this, the Master of Stair wrote, by express order of the king, to the commander of the forces in Scotland to draw together

* Melville Papers; Papers illustrative of the Highlands, 1689-1696 —Maitland Club, 1845.

† This Highland treaty (subscribed at Achallader) with its singular "Private Articles," is printed among the Culloden Papers; and also in the Maitland Club Papers illustrative of the Highlands, p. 21.

his troops in some convenient place on the borders of the Highlands, but in the mean time to commit no acts of hostility.* Without actually infringing the truce, the clans continued their posture of passive resistance to the Government, MacDonald of Glengarry fortifying his house so strongly that it could not be taken without cannon.†

In these circumstances, the measure was resolved on by the king and the secretary of offering to all the Highlanders who had been in arms against the Government a free indemnity and pardon, upon condition of their coming in and taking the oath of allegiance before the sheriffs of their respective shires at the county town. In a letter of the king to the Privy Council, from the camp at St Gerard, in the Netherlands, subscribed by the Master of Stair as secretary, the Council was commanded to issue a Proclamation of Indemnity to all such as, before the 1st of January next, should take and sign the oath of allegiance.‡ The proclamation appeared accordingly on the 27th of August, and was made known in the Highlands.

The clans showed no great desire to take advantage of the indemnity offered, and came dropping in very slowly to take the oath.§ The clans Cameron, M'Lean, and M'Donald, with the exception of the M'Donalds of Glenco, came, however, in suffi-

* The Master of Stair to Sir T. Livingstone, July 23, 1691—Melvill Papers.

† Sir Thomas Livingstone to Lord Melvill, Aug. 4, 1691—Melvill Papers.

‡ Aug. 17 and 27, 1691—Papers illustrative of the Highlands, pp. 33, 35.

§ Secretary Stair to the Earl of Breadalbane, Sept. 10, 1691—Dalrymple's Memoirs of Great Britain and Ireland, vol. iii., Appendix.

cient time to have the oath of allegiance administered to them. M'Ian of Glenco was the only chief who had not taken the oath by the appointed 1st of January.

The king and the Master of Stair returned from the seat of war in October, prepared for a winter campaign against the Highlanders.* From the Secretary's correspondence and letters at this time which have found their way into print,† it is but too clear that he was under the influence of feelings of enmity towards the offending clans which no apology of official zeal in his master's service could excuse. The language of these letters points to the extirpation and ruin of the offenders. From such a dire consummation the leading clans were saved by their submission at the eleventh hour; although now that the military preparations were complete, the king and his minister would possibly have been as well satisfied with their opposition as with their submission. The Master of Stair's openly-expressed sentiment as to these clans was, *Delenda est Carthago.* And as to the king's view of the matter, the Earl of Linlithgow, a Commissioner of the Treasury, wrote to Lord Breadalbane: "The last standers-out may pay for all; and besides, I know the king does not care that some do it [that is, take the oath of allegi-

* Stair to Breadalbane, Dec. 2, 1691—Dalrymple's Memoirs of Great Britain, vol. iii., Appendix.

† See particularly the Master of Stair's Letters in Dalrymple's Memoirs, Appendix to vol. iii.; Letters as printed in an article of the Edinburgh Review on Lord Macaulay's History, attributed to Lord Moncreiff; Two unsigned Letters, presumed from Stair to Breadalbane, printed in Appendix to vol. i. of Burton's Scotland (after the Revolution); Letters referred to in Report of Glenco Commission, printed in Papers illustrative of the Highlands (Maitland Club).

ance], that he may make examples of them." * The Macdonalds of Glenco were in the end made the scapegoats of the other clans; and the stroke that but for a timely submission would have descended on their more powerful neighbours, fell upon their heads.

After a journey in tempestuous weather, in the course of which he made an unavailing tender of his oath of allegiance to Colonel Hill, commanding at Fort William, the grey-haired chief M'Ian of Glenco, with a few of his clan, arrived on the 3d or 4th of January at Inveraray, the seat of the sheriff's jurisdiction. Although it was after the day appointed, the oath was then administered to him by Sir Colin Campbell of Ardkinlass, sheriff of Argyle, who despatched a certificate of it to the sheriff-clerk of Argyle, then in Edinburgh, to be laid before the Privy Council. The certificate was not formally laid before the Council, but, after some private consultation, was declined to be received by the clerk of the Council, and was delete and cancelled as irregular because done after the 1st of January 1692.†

* Letter in Edinburgh Review for January 1857.

† It appears from the Report of the Glenco Commission, rendered to Parliament in 1695, that the Clerk of the Privy Council having refused to receive the certificate of the oath, "because done after the day appointed by the Proclamation," the Sheriff-Clerk of Argyllshire, who was bearer of the certificate, and Mr John Campbell, a solicitor, went to Lord Aberuchill (a Lord of Session and Privy Councillor), and desired him to take the advice of the Privy Council; whereupon (these witnesses stated) Aberuchill said he had spoken to several Councillors, and particularly to the Lord President Stair, and their opinion was that the certificate could not be received without a warrant from the king, and that it would neither be safe to the Sheriff nor profitable to M'Ian of Glenco to give in the certificate to the Clerk of the Council. This was the statement of the Sheriff-Clerk and John Campbell in their evidence

Before positive information had been received in London of the proceedings in the Highlands, Instructions were sent from the king, dated from Kensington, 11th January 1692, to Sir Thomas Livingstone, in command of the troops, of which the first head was as follows:*—1. "You are hereby ordered and authorised to march our troops which are now posted at Inverlochy and Inverness, and to act against these Highland rebels who have not taken the benefit of our indemnity, by fire and sword and all manner of hostility; to burn their houses, seize or destroy their goods or cattle, plenishing or clothes, and to cut off the men." The Instructions further bore—4. "That the rebels may not think themselves absolutely desperate, we allow to [our] own powers to give terms and quarters; but we are so convinced of the necessity of severity, and that they cannot be reclaimed, that we will not allow you to give any other terms to chieftains, heritors, or leaders, but to be prisoners of war, whereby their lives are safe; but for all other things they must render on mercy, and take the oath of allegiance."

before the Glenco Commissioners, and which in the main Lord Aberuchill, in making his deposition, confirmed, "*but doth not name thereiu the Lord Stair.*" I have referred to this passage in the Report of the Glenco Commission, in order to show that Lord Macaulay's unqualified assertion (chap. xviii. of his History) that the certificate was privately submitted to some persons high in office, and particularly to Lord President Stair, and that they pronounced the certificate irregular and null, is not borne out by the evidence (as given in the Report of 1695) of Lord Aberuchill, who makes no mention of Lord Stair as one of the councillors he had spoken with, and in so far contradicts the hearsay or, at least, secondary evidence upon this point of the Sheriff-Clerk and John Campbell.

* The king's Instructions of 11th and 16th January, 1692, and the relative letters of the same date of the Master of Stair, are printed at length in the Papers illustrative of the Highlands, 1689-96, pp. 60-66.

Along with these Instructions, and of the same date, the Master of Stair wrote a letter to Sir T. Livingstone, commencing—"I send you the king's instructions super- and subscribed by himself. I am confident you will see there are full powers given you in very plain terms, and yet the method is left very much to your own discretion." After some explanations, the letter proceeds—"Just now my Lord Argyle tells me that Glenco hath not taken the oaths, at which I rejoice; it's a great work of charity to be exact in rooting out that damnable sept, the worst in all the Highlands." Another letter of the same date, superscribed by the king and subscribed by the secretary, was addressed to the Privy Council, enjoining them to issue a proclamation following out the Instructions. In this letter it is stated—"You will know before these come to your hands who have taken the benefit of the indemnity, and are thereby safe, and who have not, that the names of the leaders in particular, and their clans and tenants in general, who have been engaged and involved with them may be expressed, that nobody through ignorance may be ensnared."

On the 16th of January Additional instructions, superscribed and subscribed by the king, were despatched to Sir T. Livingstone. Of these the first article related to papers to be granted to two Jacobite officers, Buchan and Canon, to leave the country; the second and third articles related to the treatment of Macdonald of Glengarry and his friends, and to the house of Invergarry; "they were to be safe as to their lives, but as to their estates, they must depend upon the king's mercy." The 4th and last article of the Instructions was—"If M'Ian of Glenco and that tribe

can be well separated from the rest, it will be a proper vindication of the public justice to extirpate that sept of thieves." Of the same date the secretary wrote to Sir T. Livingstone—"The king does not at all incline to receive any after the diet but on mercy, nor will he alter the terms of indemnity, for that is to make people always dog [dodge], and hope for better terms than those got who obeyed and came in within the day. But for a just example of vengeance, I entreat that the thieving tribe in Glenco may be rooted out in earnest." Similar language is used in a letter of the same date from the secretary to Colonel Hill at Fort William.

Letters of the 30th January from the Master of Stair to Sir T. Livingstone and Colonel Hill repeat these directions,—Colonel Hill being told that he cannot receive farther instructions than what he has already had under the king's hand.

The orders by the upper military officers to their subordinates (most of which have been preserved) breathe the spirit of the royal Instructions and the secretary's letters. The hunter's toils closed rapidly round the devoted tribe; the fatal day came, and before dawn on the morning of the 13th of February twenty-five inhabitants of the rugged wilderness of Glenco were barbarously slaughtered. Their blood has fixed an indelible stain on the reign of King William, and on his Scottish Secretary; for although the *method* or manner of the massacre, whereby the laws of hospitality and humanity were set at nought, may not have been anticipated and would probably not have been sanctioned by the king and the secretary, it is

very clear that both the one and the other contemplated, in their instructions and letters to the military officers, the rooting out of the offending clan by hook or by crook, without the actors being too particular as to the mode of doing it.

That the Master of Stair, when directing (in terms of the king's Instructions) a military execution by way of example, was unconscious of the unjustifiable severity and atrocity of the act he authorised, is evident from letters addressed by him in the ensuing March and April to Colonel Hill, commanding at Fort William, who was not himself an actor in the massacre. Indeed, except as to the violation of the laws of hospitality, the slaughter of Glenco was somewhat of the same character with the cruel measures, by proscription and otherwise, which had been used at intervals for upwards of a century against the marauding clan of M'Gregor.

In the first of these letters, having referred to the talk in London of the Glenco men having been murdered in their beds after they had taken the oath of allegiance, he continues — "For the last, I know nothing of it. I am sure neither you nor anybody empowered to treat or give indemnity did give Glenco the oath; and to take it from anybody else after the diet elapsed did import nothing at all." And within two months after he writes again to Colonel Hill from the Hague, where he was in attendance on the king—"For the people of Glenco, when you do your duty in a thing so necessary to rid the country of thieving, you need not trouble yourself to take the pains to vindicate yourself by showing all

your orders, which are now put in the Paris Gazette. When you do right, you need fear nobody." *

Although the affair of Glenco seems to have been talked of in London in the spring of 1692, the details were not generally known for a considerable time after. The first public notices of it appeared in the Paris Gazette, the information being probably supplied from Jacobite sources.

* Letters of 5th March and 30th April 1692, in Papers illustrative of the Highlands.

CHAPTER VI.

The General Assembly's Commission and the Episcopal Clergy—Views of the king and of the Master of Stair—The meeting of the Assembly adjourned by royal mandate to an inconvenient season of the year—The Earl of Lothian High Commissioner—Ill-humour of the Assembly—Letters of the Master of Stair to the Earl of Lothian on the affairs of the Assembly—The king's letter to the Assembly recommends union with Episcopal ministers on certain conditions—Resistance of the Assembly to the wishes of the king.

As the Secretary of State in immediate communication with the king, the Master of Stair had a difficult part to play in connection with Scottish ecclesiastical politics. The Commission, or standing committee of the General Assembly, did not in its subsequent actings follow up the moderate conduct of the first Assembly which met after the passing of the Act establishing Presbyterian Church government. In large tracts of country the Episcopal clergy were harshly removed from their livings, not by "rabbling," as in the western shires immediately after the Revolution, but under form of law,—without giving them a fair opportunity of considering the conditions required by the Assembly and approved by the king, the ministers complying with which conditions were to be allowed to retain their benefices, and be admitted into the Presbyterian Church. It is possible

that a considerable proportion of the Episcopal divines who were then ejected might not have inclined to take the oath of allegiance and sign the Westminster Confession; but they had small encouragement from their Presbyterian brethren to do so. The precipitancy of the Assembly's Commission in this matter was shown by the fact of there being for a number of years a want of qualified men to fill the vacant churches.*

The Principals and Professors also in Edinburgh, Glasgow, and St Andrews universities, who did not forthwith subscribe the Confession of Faith and take the oath of allegiance, were, with more zeal for Presbytery than regard for learning, similarly dismissed, under an Act of Parliament for visitation of universities and schools, passed soon after the Establishment Act.†

A report of these occurrences, particularly in reference to the parochial clergy, having been made by the king when at the Hague with the Master of Stair in the spring of 1691, his Majesty addressed a letter to the Commission, the substance of which is stated by the Secretary in a letter to Lord, now Earl Melvill, his colleague in Scotland:—

"Hague, *Feb.* 13, 1691 (*o.s.*)

"My Lord,—I have had no letter from you since I came from London; we are impatient to hear from Scotland; the post hath been expected all this week, but is not yet come. The last we have from Scot-

* Cunningham's Church History, ii. 295; Life of Principal Carstairs.

† Stat. 1690, c. 17; Russell's History of the Church in Scotland, ii. 360. The University of Aberdeen, where Episcopacy was strongest, was spared in the mean time.

land is of the 25th ult., when matters did not look very well. Just now the king hath signed two letters, one to the Commission of the General Assembly, recommending them to unite with those who are otherwise well qualified for the ministry, though they have served formerly under Episcopacy; and that such of them as were turned out summarily and shall be called to vacant churches by the plurality of the heritors and elders, where there is no just cause to the contrary, be admitted; and that as to any who do complain of hardships in their sentences, they shall take their complaints into consideration, and deal impartially as the case requires, and put the king to no further trouble to consider these complaints, assuring them he will protect their persons and maintain the government of the Church by Presbytery, and that he will suffer no invasion to be made upon it. . . ."*

The commission of the Assembly, probably regarding the royal letter here referred to as an Erastian interference with the concerns of the Kirk, paid little attention to it, and proceeded with their work of ejecting; while a second letter from William to the same purpose had no more effect.†

In this state of affairs the second meeting of the General Assembly, which had been appointed for an earlier date, was adjourned by royal mandate to the 15th of January 1692, the Earl of Lothian being appointed High Commissioner.‡ This farther adjourn-

* Melvill Papers, 594. † Cunningham, ii. 297.

‡ Robert, fourth Earl, afterwards first Marquis of Lothian, supported the Revolution, and was Lord Justice-General of Scotland under King William.

ment to an inconvenient season of the year did not tend to smooth the temper of the ministers and members of Assembly, already ruffled by the king's interference on behalf of the Episcopal clergy, and by his exercise of the power assumed to belong to him, of calling and adjourning the Assembly at pleasure. They did meet, however, on the day appointed, though with defective numbers, and in a very ill humour.*

The winter and early spring of 1692 were passed by the Master of Stair in London. Assisted by a small committee (of which it is not unlikely the Rev. William Carstairs and Lord Tarbet were members), he prepared and put in shape the king's letter to be presented by the commissioner to the Assembly, and also the declaration proposed to be taken by conforming ministers. In the beginning of January he wrote to the Earl of Lothian:—

"LONDON, *January* 5, 1692.

"This night we had another meeting of the same persons in the same place, where we had the letter and the address and declaration or test finally concluded. The letter is as you saw it. I have enclosed the double of the other, and your lordship may expect to have all at Berwick by the next or a flying packet. This night I am now come in from that conference, so I have no time to write at the length I would; only Carmichael continues obstinate, though

* The proceedings of this General Assembly, which are not in the usual editions of the Acts of Assembly, were made public some years ago by the late Principal Lee, from the ecclesiastical records in his possession; a publication to which Dr Cunningham, in his Church History, refers.

I was with him this day from the king.* It is likely not only to lose me a friendly conjunct, but really I fear some may come in that will not be so generally acceptable. . . . I have by this night's post sent down Tweeddale's commission to be Chancellor and his gift of pension, £1800 sterling. Melvill's is not yet signed, and our other affairs are as you left them. By the next I will give your lordship all your titles, and in the mean time pardon this abruptness.—My dear Lord, farewell." †

This letter was followed up by another which would be received soon after the Assembly met :—

The Master of Stair to his Grace the Earl of Lothian, their Majesties' Commissioner.

"London, *January* 16, 1692.

"May it please your Grace,—I had yours from Morpeth, by which I conclude it was not before Thursday that your Grace could reach Edinburgh. I gave that account to the king this day, and delivered your letter to my Lord Portland. . . . If the General Assembly shall be so unwise as to stick at what the king proposes to them [in behalf of the Episcopalian clergy], I think your Grace should give

* Lord Melvill having ceased to be the Joint-Secretary for Scotland about the end of 1691, that office was tendered to Lord Carmichael, who declined to accept it; Johnstoun of Warrieston being thereafter joined in the office with the Master of Stair.

† This letter, and those which follow, from Sir John Dalrymple to the Earl of Lothian, are in the collection of the Marquis of Lothian, and have been very handsomely lent by his Lordship for this work. These letters have never hitherto been printed.

them time, for they are much abused and deluded; and I understand some people who pretend other things here endeavour that they may either unanimously consent or unanimously refuse, and do insinuate if they be unanimous in their refusal, the king will not further press it. This is a most pernicious project which will entirely cheat and ruin them, and make the king see that there is no moderate party amongst them. Your Grace knows how this will be improven here.

"The occasion of this flying packet is instructions to Sir Thomas Livingstone on the occasion of Glengarry's proposals to Colonel Hill. The king will not dispense with the oath of allegiance, especially to Papists, though perhaps security by bail may be in effect better: but he will not alter the terms of his proclamation after the date is elapsed.* All our affairs are at a stand, and I think will be so till we hear from you. If anything difficult occur, or that they [the General Assembly] will fall upon other matters than what is proposed, I think your Grace had better despatch a flying packet, which can be returned in eight days.†—My dear Lord, adieu."

When the sitting of the Assembly commenced, the Earl of Lothian presented the royal Letter. Referring to the letters he had already addressed to the Commission, the king in this letter complained that

* This passage of the letter most likely refers, though in brief language, to the king's determination to enforce the penalty in the Proclamation of the previous autumn which the defaulting clansmen should incur who did not make their submission within the date prescribed in the Proclamation.

† That is, allowing eight days for the courier's journey to London and back to Edinburgh.

nothing had been done to further the object he had so much at heart of the reception into the Church of such of their Episcopal brethren as might be disposed to take the oath of allegiance and subscribe the Westminster Confession, and intimated that he had instructed conforming ministers to apply to them for admission into the Church, in terms of a formula and declaration delivered to his Commissioner; that, in cases of application for admission calling for inquiry, the Assembly should appoint two commissions for the north and south of Tay respectively, and with a view to greater impartiality, one half of these commissioners should be old Presbyterian ministers, and the other half conforming ministers. The letter concluded with an assurance of the king's firm inclinations to maintain the Presbyterian government in the Church of Scotland established by law.*

The royal letter having been read, the Commissioner then made a speech urging the topics contained in it, and arguing that although Presbyterianism had been hardly treated in the former reigns, that should be no hindrance to Episcopal ministers already in the exercise of the essentials of religion being received into the government of the Church, with this double advantage, that it would both strengthen considerably the Presbyterian body and leave the non-conforming Episcopal clergy without either party or abettors.

The reading of the royal address and the speech of the Commissioner fell upon deaf ears; and when, in the course of a day or two, Lord Lothian produced

* Bishop Burnet's History of his Time, 1692, *ad init.*; Cunningham, ii. 298.

the formula and declaration to be taken by conforming ministers before their reception into the Church, the consideration of it was coldly referred to a committee. Some addresses were presented by Episcopal ministers from various districts of Scotland, desiring to be admitted into communion with the Presbyterian Church upon the conditions already mentioned; but they were all referred to a committee,—a mode of disposing of disagreeable questions in which the General Assembly were already adepts. The Assembly meanwhile occupied itself with unimportant matters of detail, bringing an obstinate indifference to bear against the proposal to which "William the Deliverer" so anxiously asked their favourable attention as Protestants.

During the sittings of the Assembly, Sir John Dalrymple was in London, keeping himself in communication both with the king and the Commissioner. He did not leave London till March, when he accompanied William to the Continent. To the Commissioner he wrote as follows:—

The Master of Stair to the Earl of Lothian.

"London, *Jan.* 26, 1692.

"May it please your Grace,—I had your two letters by the same post. I am very sorry that the General Assembly will take that course which must lose them to the king; and I believe that the best feather in their wing. They must see that upon the hopes of their compliance the civil government hath been delayed all this time; and now, in reason, they having defied the king, he will make such a set as will keep

them in order. If he does otherwise, I am sure it is more than they deserve at his hands. The king is extremely well pleased with your Grace's part in the matter. I read both your letters to him, and spoke of those two things which are most proper for your Grace. You know he gives no positive answers, but I did conclude that one of the two he would do. . . . I lay my account, since there is no flying packet come, that either the answer to the king's letter sticks, or that it is acceptable. I could wish from my heart that they would rather trifle off the time than fall upon such things as will oblige your Grace to use the powers you now have, for I never did wish a General Assembly sit longer than twenty days. But if it cannot be well got to sit so long, it looks like abortive, and it will make noise through the world.

"*P.S.*—Since my writing, my Lord Portland sent me word that he was so busy he could not write with this express, but charged me to present his service to your Grace, and tell you he would write by the next. I hope your Grace shall have no need of this instruction; but, however, I would not have you without power in case they continue in ill-temper. Some believe things will mend upon Carstairs' arrival, but I fear he hath cast the cat in the kirn [churn] by Dunlop, and he will find it difficult to take her out again."

The Same to the Same.

"London, *Jan.* 30, 1692.

"May it please your Grace,—I am glad to find by the last some small hopes that the Assembly may come to temper, and unite with their brethren. I

had written the same thing to your Grace I had from you, that some who had been instrumental to put them wrong would now change their word,—at least, that they should not be seen in the matter; but it is easier to raise the devil than lay him. We had laid our accounts here that before this can come to your hands, the Assembly had been dissolved; but if they can be brought to what is proposed, and is really their interest, it is much better they are yet sitting: I doubt nor your Grace will hinder them to fall on any other matters of importance.* You cannot believe how universally your speech takes here. I durst not adventure to print it till I see it in print from them. Yesterday Dr Bates† dined with me, and some others. I had occasion to speak of it with the dissenters; they did all of them join with it in every title; and at court I saw Nottingham and Carmarthen also made panegyrics, as his Majesty had done to me the day before. Your Grace, I believe, knows Portland's thoughts from himself, and I am sure the king is well pleased you have retrieved to him the power of ordinary adjournment which was usurped last Assembly before the Commissioner got his unclear instructions, which occasions that shyness and difficulty you find in those minute matters. Come what will, your Grace hath both done yourself right to [prove] your sufficiency and fidelity, and likewise to show that there are a sort of Presbyterians who are not for the extravagant height of church-meddling, or being opposed to, or independent on, the

* His Grace did occasionally take part in the business brought before this Assembly, which interference was not very palatable to the members.

† Dr William Bates, the eminent nonconformist divine.

civil authority. If you had not done as you have done, then the conclusion had been inferred against all Presbyterians that they were not to be trusted where the civil government was concerned. Shall all that party now be suspected as to their inclination to turn everything subject to the Kirk, and to render it intractable and insupportable to the State, which really I do not see in the constitution of Presbytery? But some weak men have always, to support their own interest, either suffered or instigated churchmen to go to extravagances; and they believe such as will not bear or concur with them in this are their enemies, but truly they are their best friends who would make their government tenable, neither uncharitable to their brethren nor undutiful to their sovereign. There is great observation that Brodie is gone north; and it is said he and Grant brought from the north such addresses as came from the Presbytery in the west. But I hope this shall never be heard of; it is not the way with our king to fright him by making a muster in opposition. I apprehend those he finds have been this twelve-months past in his service, opposing his commands, shall have no more trouble for the future. I shall endeavour as much as I can that if this does produce alterations, those who have been from the beginning for him, who never did oppose him in the convention parliament nor in the council, by joining either the Club or the Killicrankys,* be brought in instead of those who may yet go out, in case there be farther alterations. It is too true, those who were moderate have been too much neglected on both sides. Your

* The Jacobite party.

Grace hath given good proof that there are of that sort both capable and willing to do all those reasonable things the king desires."

The Same to the Same.

"LONDON, *Feb.* 2, 1692.

"May it please your Grace,—The packet from Scotland, which was yesterday due, is not come in, though the letter from York came this morning. They did wait for some hours for the mail from Scotland, and finding it did not come, they concluded, as we must do, that either the boy is lost in the storm or else that the packet is robbed. The last black box was likewise broken up; what letters were taken out we do not know, but those which did remain had the seals entire, amongst which I had letters from your Grace, the Chancellor, Sir Patrick Murray, my father, and brother Hew; and my Lord Portland's from Mr Carstairs came to hand too by this accident or curiosity. We are in great doubt what is become of the General Assembly; but for my part I conclude there is little or nothing done, else we should have had a flying packet from your Grace, whether it had been for good or ill. There are many things on the wheel in relation to England and Ireland which will be public in some days. . . . My dear Lord, farewell."

The Same to the Same.

"LONDON, *Feb.* 9, 1692.

"Before this is with you, I apprehend your Grace is eased of a very uneasy task, in which you have

done yourself very much right; but wilfulness is likely to bring all the mischief on those poor deluded people that they feared, and their backwardness well recommends their enemies who offer fair. I can say nothing (having got no letter since this of the 30th ult.) more than what I wrote by the flying packet. . . . I am very confident you will have some mark of the king's acceptance of the service you have done him.

"I doubt not your Grace will write to the king at the end of this affair."

The Same to the Same.

"London, *Feb.* 10, 1692.

"May it please your Grace,—I have used all the diligence I could to get you positive instructions, as now, I am sure, you have herewith. It [the letter of instructions] alleges somewhat in general that the Assembly was deluded at the beginning to believe that the king was not in earnest, and that their being unanimous would save them, though they did not comply. I have sufficient evidence from my father and brother, and Sir Patrick Murray, as well as your Grace, that Mr Carstairs hath appeared to contradict this story, and to assure those he met with that the king would be displeased, though it is certain Mr Dunlop did not say so at his arrival. That being clear, I apprehend there will be less use made of those churchmen's whispers. Though I do the justice to Carstairs that he openly was for the contrary, yet his brother, being employed and instructed upon his interest and recommendation, it does not well for having his advices for the future. It was once likely

at our meeting this day to have carried that the [king's] letter should go to a vote, to discover every man's part, and particularly those who have got themselves to be elders [of Assembly] who are in the Government; but it was justly thought that a vote *contra* to the king's letter, and a paper on record, was both prejudicial to farther thoughts of union and to his Majesty's authority. Besides, there being so great a plurality, cross men's parts or sentiments should not be discovered, for people might instigate others, and lye by or comply themselves. But in all those matters the king doth trust your Grace's report, whom he hath found to be so very faithful to him. I am glad poor Polwarth hath been sober. I fear the storm make this long a-coming. Therefore, my dear Lord, farewell."

CHAPTER VII.

The Commissioner, in compliance with the King's instructions, dissolves the Assembly—Letters of the Master of Stair from London and the seat of war on the Continent to the Earl of Lothian—The Scottish Parliament pass Acts "for settling the quiet and peace of the Church"—The General Assembly again called to meet after a long interval—Expected collision with the civil power on the question of obliging the Presbyterian ministers to take an oath acknowledging William and Mary as king and queen de jure*—Part taken by Lord Stair and Lord Tarbet—The Rev. Mr Carstairs—The king and the Assembly come to terms—All's well that ends well.*

The "positive instructions" referred to in the Master of Stair's letter of the 8th February would reach Edinburgh and be in the hands of the Commissioner by the 13th. The General Assembly continuing in their course of passive opposition to the recommendation contained in the king's letter, the Commissioner on that day intimated to the Assembly that his Majesty, perceiving no inclination among them to comply with his desire that they should unite with their brethren, had commanded him to dissolve the Assembly, which he accordingly did, without naming another day for its meeting. The moderator, backed by a vote of the members of the Assembly, then spoke to the effect that the Church had an inherent right to meet about its own affairs,

and named a certain day in August 1693 for their next meeting.*

So ended King William's well-meant endeavour to bring about an agreement between the Episcopalian and Presbyterian clergy. Their period of estrangement, however, had lasted too long, and was accompanied by too many bitter recollections, to admit of their mutual jealousies being so easily healed. It is, moreover, very doubtful if, upon principle, the best and most conscientious of the Episcopal ministers could have been brought to agree to the terms of the conformity proposed. So that although the Presbyterian body must be admitted to have shown harshness and a want of Christian charity in the hurried ejection from their livings of many estimable men, we must remember that the memory of the proceedings in the late reigns was still recent, while a catholic spirit of religion, in the proper sense of the term, such as that which had inspired the excellent Leighton, was not to be found in either party. Toleration, nominally introduced at the period of the Revolution, was a virtue and principle of action which had not yet taken root in the nation at large. The king himself, in advance of his time, was tolerant to an extent which was called by many latitudinarian; and this was also the temper of mind of Lord Stair and of the Master of Stair, who, both of them, looked more to a basis of Protestantism than to the distinctions between Episcopacy and Presbytery.

The correspondence between Sir John Dalrymple and the Earl of Lothian continued till the spring of

* Cunningham, ii. 300; Burnet's Own Time, 1692 *ad init.*; Pardovan's Collection, I., lib. xvi. § 5.

the following year. Such of the letters to Lord Lothian as are of some general interest follow in the order of date :—

The Master of Stair to the Earl of Lothian.

(Extract.)

"London, *Feb.* 20, 1692.

"I send you inclosed the first letter I believe ever King William subscribed to Scotland. I dare assure your Lordship he is very well pleased with you, and that you and yours will find it so. His Majesty would willingly have called your Lordship up to have given the true account of every man's part, but he is convinced that there cannot be time for your coming before he goes, which is not very certain but it may be sooner, but the 10th of March is the longest. . . ."

"London, *Feb.* 27, 1692.

"Your letter, writ by another hand, I read to the king. I am in the same circumstances with you ; I do write freely my present thoughts without either secrecy or keeping doubles. Truth will always hold its feet, though men may forget and circumstances alter. I do not believe I want any spyes, for that post I feared had been lost in the beginning of the storm came after a long time. I do agree with your Lordship those people are neither tractable nor grateful, but yet they have something that one would not do well to destroy them, though he can neither manage nor oblige them. Something must

be done to hinder them to come themselves and confound the civil government, but I shall never be accessary either to subvert their constitution or to bring them to scaffolds, though really they do some things so intolerable that they must be used as mad bodies and put up in a bedlam, if they continue their rabbling or protestations. This day Mr Johnston kissed the king's hand as my conjunct. I had no expectation of making another campaign, where the want of language does but hamper me, but I was desired to make myself ready. I had some hopes to have made a start [to Scotland], to have seen friends for a month. The man you writ of stands stiffer for those commissioners who have embroiled the king's affairs than those who, with little advantage, and as little ambition for that character, did honestly what they were instructed; but well-doing is its own reward.—My dear Lord, adieu."

"London, *March* 3, 1692.

". . . There are new commissions of council, treasury, and exchequer, which will make great alterations in affairs; but the king hath signified his pleasure to those who are entering, that he neither intends to alter the government of the Church, nor will allow any he employs to attempt that, or to give them vexation or disquiet; only he will have them hold from those extravagances that are neither in the constitution of Presbytery nor consistent with peace or welfare either to the nation or themselves. The king hath signed your son's commission as colonel of that regiment

of dragoons, wherewith I am as well pleased as anything. . . ."

"From the Camp near Hamerthal,
June 19, 1692.

"I am like the people that go by their time and produce nothing. I have been waiting all this time to send your Lordship something considerable, that now I shall content myself to tell you that your son* is very well; his horses are come to Brussels. Those he provided, though dear enough, did not fit him sufficiently for constant attending the king; and for any occasions that fall out now, both he and Captain Hay will be in condition to pretend to be employed when there is use for them. It cannot be only to our king that his fleet hath done its part.† The Imperialists have opened their campaign with the taking of Grand-waradin, and everywhere there is success but where he is that animates all. I confess to the world it is plain the whole power of France is here bended against him they fear most, and the Germans least. By their [the Germans'] slowness or perfidies, they allow the French time to seize the most important place in the countries in our king's view.‡ If he [the French king] carry it, I confess, when he is ruined by sea, this is the most glorious action he ever did by land; but I hope he shall find it either so hard as to repent the undertaking, or that he must stay so long here with all his forces that upon all the other quarters he shall suffer more than

* Afterwards General Lord Mark Kerr.

† The British fleet, under Admiral Russell, had just gained a victory over the French fleet at La Hogue.

‡ Namur, which was soon after this taken by the French, under Louis XIV. in person.

he gains here. But really this is new in the French king—it looks rather like vying for honour than interest; and it is hard to believe any man hath honour who would do so base things as to bribe and persuade men to attempt the king's life, as with sufficient evidence he hath been doing this season.* . . . The state of the war is, the French have sufficient force here both to continue the siege of Namur and to cover it, for they have an army greater than is betwixt us;† and the town beyond a little rivulet, which, though it appears of no consequence, yet all the generals do oppose that the king should adventure to pass over upon any army which is stronger than he in cavalry lying in battalia on the other side, who move on their side whenever we move, and still have a less motion, their circuit being within us, to cover the place. The whole garrison that was in the town is now in the castle, so many that the governor did only allow them shelter in the outworks; but there is want of nothing in the castle. The fort the king ordered to be built last year still holds out, and till that be taken there can be no battery raised against the castle, which was formerly thought the strongest in this country; but I know it will not hold out above a week after the fort is taken. In the mean time, since the king [William] keeps all these forces here, who should be detached for Germany and Savoy, so long as the place can hold out he ought not to adventure anything upon disadvantage. . . . We may thank God that, by the victory at sea, Britain is

* This refers to the alleged design of Grandval to assassinate King William, which was supposed to have been countenanced by the French minister Louvoy.

† That is, the Allies.

secure; and since the allies do not pull equally, but leave the king's person and reputation exposed to the shock of all, next year he may leave them to defend themselves, for the proper way to attack France is by sea. I shall not forget the matter of the Chancellary, or anything I can that concerns your Lordship when I find it seasonable; at present Scottish affairs are not in head."

In October, after the close of the campaign, the king and the Master of Stair returned to London from the Continent. During the reign of William, Scotchmen of condition and estate were not expected to leave their own country to visit London and the court unless by permission of the king, of which there is evidence in the next letters to Lord Lothian :—

"London, *Oct.* 29, 1692.

"I am extremely content that you incline to pass a part of this winter here, but the king hath been peremptor in his commands to Tarbet and Breadalbane to return, though they did offer to swear they had no information of the prohibition. Therefore his Majesty is not willing to call or allow any to come up at the same instant; but shortly I do not doubt your Lordship will be welcome. At this present the affairs of the English Parliament do take his Majesty up so as the many things that require his consideration as to Scotland must be for some time delayed. They [the Parliament] are full of overtures and displeasure for the success of affairs this season, and the allies lying by; but after some time spent in stuff they will come to give competent sup-

plies, I hope, for really the bulk of this nation are affectioned to the Government, and sensible of the security they enjoy both of their religion and property. I wish it were as well with us (in Scotland) who talk more of religion and consider it less. Your son is not come over yet; he staid to get off his horses, and till this day the wind hath been still cross, which kept me very long at sea."

"LONDON, *Jan.* 5, 1693.

"This day your son Sir Charles * took his leave of his friends; he goes post, and I believe will be with you about the time this comes to hand. I sent your jewel with him as I wrote to your Lordship some time ago; he can tell you the value that was put upon it. Both the people to whom it was shown did always believe it was to be sold, whereby they put the less estimate upon it; the value of diamonds falls daily. I think it could render no more than £200, though I know it hath cost abundance more.

"Either it is because the king hath not resolved whether the [Scottish] Parliament meets or not, and consequently will not have your Lordship from the place, or because he hath refused liberty to others, that he does not consent to your coming here; but I daresay it is for no want of kindness to your Lordship, which makes me the less solicitous, though really I would be extremely well pleased to have the satisfaction to wait upon you. . . ."

William proceeded to the Continent in March 1693, leaving his Scottish secretary in London.

* Afterwards Director of the Chancery in Scotland.

The session of the English parliament being closed, the Scottish parliament was fixed to sit in April. In Edinburgh, Johnston officiated as secretary of state for the Government, "having told the Master of Stair at London that he had an order for this, but would not make use of it in case he [the Master] came down, which he did not."* In anticipation of the sitting of Parliament, Stair wrote to Lord Lothian :—

The Master of Stair to the Earl of Lothian.

"London, *March* 24, 1693.

". . . The session of Parliament—though it may appear odd to be holden in absence of the king, yet it could hardly be otherwise, for whilst he is in Britain during the war, the English parliament must sit; from whom the great supplies necessary to support the war are only to be had, and he hath no reason to allow both parliaments to sit together. I am sure the king's instructions as to both civil and Kirk matters are fair, and I doubt not you will give large supplies as much as you can bear; and it is shame more was given to another king on wars designing no peace, whereas we are in necessary war. I tell to yourself that great endeavours have been made to have either the terms of union with the northern clergy other than what had been concerted to the General Assembly, or left indefinite. I thought this was neither so honourable for you nor safe for them, so the king keeps to the same terms agreed to with your Lordship. I wish that the commissioner

* Carstairs State Papers, p. 154.

to the Parliament [Duke of Hamilton] may be easy, and that matters may be resolved with amity. If it prove otherwise, those that have pressed the meeting [of parliament] and would have it at any rate, promising to do all that is just or desired in this session, will do themselves no good if they fail, nor those they intend to favour. I persuade myself some people will continue united, as they have been, in the king's service."

The Same to the Same.

"London, *April* 1, 1693.

"I think it strange to observe some people retain a grudge at your Lordship for following faithfully the instructions you received. . . . I still am of opinion that it is a hard task for a commissioner and dangerous for their Majesties to hold a parliament in absence, where there can be no direction given; yet I wish and hope that things may be yet done which are in the Instructions. For my part, if a good thing be to be done, I shall never wish it miscarry because it is in other hands. All I wish to say is, that for all the jealousy and resentments against me, there is fully more undertaken to be put upon that party than ever I designed. I shall be glad to see it, though I have not faith to believe that the *Jure divinos* will come up to what is undertaken for them.

"I know your Lordship will have some concern for your friend my Lord Landsdown. He pressed the king too much for the payment of his arrears when he was ambassador for King James in Spain; he said his father's service to the Government and

his own deserved more justice. The king took that ill, and said he did injustice to nobody and my Lord was impertinent, and so went on where he was going, to the queen's side. My Lord followed, and at the king's return he said, since his Majesty was pleased to signify that he was impertinent, he thought it proper for him to lay down any commissions he had. . . . My Lord Bath was well paid for what service he did in delivering Plymouth, so it may be the king cared the less to have that mentioned to him.—My dear Lord, adieu."

The parliament of Scotland meeting in April proved unexpectedly tractable and amenable to Government influence. Dissatisfaction with the Master of Stair and his father on the part of the Presbyterians prevailed both in and out of Parliament. Secretary Johnston, the manager for government, under the king's instructions, although not much a friend to the Stairs, set his face against any formal attack upon them; and notwithstanding the desire of some of the members, the delicate subject of Glenco was not once alluded to.*

One particular in the conduct of the Master of Stair about this time which excited great jealousy among the zealous Presbyterians, was his readiness in granting passes for the Continent to Roman Catholics; young people going to Popish seminaries of

* Secretary Johnston's Letters to Mr Carstairs, Carstairs State Papers, p. 159 *et seq.* The Secretary is equally reticent in his private letters; and when he writes to Carstairs of the difficulty of keeping the Parliament from falling on the Master of Stair "for illegal orders," it can only be conjectured that this expression refers to the affair of Glenco.

education, and persons more advanced in life to St Germains.* No doubt the Jesuits in France were active in their vocation, and the court of St Germains was encouraging every kind of intrigue; but Sir John Dalrymple (liberal, moreover, in his views of creeds) was probably actuated by motives of sound policy in allowing some disaffected Roman Catholics in the mean time to quit the country, where persons at home might have been directly influenced by their Jacobite views.

Two Acts of Parliament were passed this spring as to which Lord Stair and his son would both unquestionably be consulted. One was an Act providing for an Oath of Allegiance and Assurance to be taken by persons in public trust, including "all preachers and ministers of the Gospel." By the oath of assurance they acknowledged William and Mary to be "the only lawful undoubted sovereigns of this realm, as well *de jure* as *de facto*," &c. Another Act, "for settling the quiet and peace of the Church," provided for ministers qualifying themselves by taking the oath of allegiance and assurance, subscribing the Confession of Faith, and acknowledging Presbyterian church government; and also for the Estates of Parliament addressing their Majesties to call a General Assembly, to the end that all ministers so qualifying should be admitted to partake in the government of the Church.†

By this provision for calling a General Assembly, the difficulty which had been occasioned through the closing of the previous Assembly by the Earl of Lothian without a day being named for their next

* Carstairs State Papers.

† W. & M. 1693, ch. 6 and 22.

meeting, in which the king and the Assembly should each concur, was in some degree met; and (passing over the day named by the Moderator) the 29th of March 1694 was fixed upon for the next sitting. The General Assembly was accordingly summoned for that day, with the concurrence of, or at least without objection from, the ecclesiastical authority. Lord Carmichael, the royal commissioner to the first Assembly, was reappointed to the third.

The provision for imposing the oath of allegiance and assurance upon all ecclesiastics produced a great ferment in the country, the majority of the Presbyterian ministers and a majority also of the Episcopalian clergy being disinclined to comply with it. Neither party could see their way to declaring William and Mary king and queen *de jure* as well as *de facto*. The Presbyterians, alleging that no such oath had ever before been imposed upon the Church, and chafed by recent proceedings, were jealous of acknowledging a king they were pleased to call Erastian, being determined to read the oath as involving a recognition of the royal supremacy in ecclesiastical matters. The objection of the Episcopalian nonjurors was more simple and intelligible, resting on a denial of the legal right of the new family to the crown.

The Privy Council had it in charge to carry the provisions already mentioned into effect; the leading members of Council at the consideration of this matter being the Lord President Stair and Lord Tarbet. To the Privy Council, therefore, the Presbyterian ministers applied in their straits to be relieved from subscribing the oath of allegiance and assurance;

but instead of listening to their request, the Council recommended to the king to issue an order that every clerical member of the Assembly about to meet should subscribe the oath before taking his seat. A dangerous crisis, hastened by the advice of the two veteran asserters of what on principle they regarded as prerogative, was approaching; the royal commissioner sending one "flying packet" to obtain final directions from the king, and the Assembly ministers another on the back of it, beseeching the friendly intervention of Carstairs. By the timely interposition of the latter with his sovereign, the putting of the oath at the commencement of the sitting of the Assembly was dispensed with, and a collision which might have been dangerous to the Presbyterian Church and to the peace of the country was averted.*

The name of the Master of Stair does not appear in any letters or records in connection with this crucial question. While acting as secretary with the king in London, it is not unlikely he may have declined to involve himself personally in the course of proceeding recommended by the Privy Council.

At the meeting of the General Assembly, the praise of the king and of Mr Carstairs was in every mouth; and it is to the credit of that body that no ill use was made of the concession which had been granted to them. They showed their sense of the king's favour by appointing a commission to receive Episcopal ministers qualifying themselves in terms of the recent Act of Parliament; giving expression likewise, though without much result, to a more

* Life of Carstairs; Cunningham's Church History, ii. 306.

charitable consideration of their Episcopal brethren. They provided at the same time for the supply of vacant churches.* In regard to the important point of the calling and adjourning the sittings of the Assembly, they met the crown half-way; the Government, by advice of Carstairs, being now disposed to withdraw from the right claimed, which the Master of Stair had as a statesman contended for, of summoning at pleasure and adjourning meetings of the General Assembly. After the meeting of the next Assembly in 1695, and up to the present day, an understanding has always been come to upon this subject between the Sovereign and the Church; the royal Commissioner dissolving the Assembly and appointing the next meeting upon a day agreed upon, in name of the Crown, while the Moderator of the Assembly does the same as by authority of the divine Head of the Church.

* The Toleration Act of Queen Anne gave to the Episcopal community in Scotland an express legal right to the undisturbed exercise of their religious worship, so that no Episcopal clergyman could be imprisoned by the Scottish courts (which was attempted to be done) for using the English liturgy and prayer-book; but it was long before a genuine spirit of toleration, in accordance with William's desire, made itself practically felt in the Presbyterian strongholds of Scotland.

CHAPTER VIII.

A royal Commission issued for inquiring into the massacre of Glenco—Their Report eagerly taken into consideration by Parliament—Substance of the Report, and inconsistent proceedings of the Parliament—Address to the king for measures to be taken against the Master of Stair—His retirement from office.

The Master of Stair continued to act as secretary of state in immediate communication with the king during a considerable part of the year 1695, though a great deal of Scottish business, not strictly official, now passed through the hands of the Rev. William Carstairs.* But the storm which had been gathering in his wake was now about to overtake him. The Jacobites were on the watch to convert the accounts and surmises as to Glenco circulating in society and the press into a more definite ground of complaint against the Government; while the Presbyterians of the old strain were becoming more and more desirous of gratifying their still subsisting grudge against the Dalrymple family, and of driving the secretary from his office.

Passing over a year, the Scottish parliament met in

* In June 1695 we find the Earl of Argyle adding this postscript to a letter addressed to Carstairs: "I forgot to acquaint Secretary Stair Earl Lauderdale is dead, which will occasion a vacancy in the Session, his brother Hatton succeeding him."

May 1695 under the presidency of the Marquis of Tweeddale as royal commissioner. At the first meeting of the House, Lord Tweeddale, anticipating their wishes, announced that a Commission had been issued in April by his Majesty for inquiring into the slaughter of the men of Glenco.* This intimation was well received and duly acknowledged by the House, and the commissioners proceeded to their task with all diligence. They examined witnesses, and called for letters and documents; and, spurred on by the impatience of Parliament, concluded and subscribed their Report by the 20th of June. It was immediately forwarded to the king; but before the original or copy sent to the king was returned, the parliament insisted on the report being read to them. The document contained a methodical digest of the facts previous to and at the commission of the slaughter, and of the relative letters and instructions, quoting passages from the depositions of the witnesses, and from the letters of Secretary Stair and the military officers. It concluded upon the whole matter, as the opinion of the commissioners, "1st, That it was a great wrong that M'Ian of Glenco's care and diligence as to his taking the oath of allegiance on the 6th January 1692, with the sheriff's certificate thereof, and Colonel Hill's letter to the sheriff, and the sheriff's letter to the sheriff-clerk for

* The rolls of Parliament bear (May 23, 1695) "That his Majesty's commission under the Great Seal for an inquiry about the slaughter of Glenco was read; after which it was voted *nem. con.* that his Majesty's High Commissioner transmit the humble thanks of the Parliament to his Majesty for ordering an inquiry in that matter, whereby the honour and justice of the nation might be vindicated."—Act. Parl. Scot., ix.

clearing Glenco's diligence and innocence, were not presented to the Privy Council when they were sent to Edinburgh; and that those who advised the not presenting thereof were in the wrong, and seem to have had a malicious design against Glenco; and that it was a further wrong, that the certificate of Glenco having taken the oath was delete after it came to Edinburgh, and that being so delete, it should neither have been presented to or taken in by the clerk of the council without an express warrant from the council. 2d, That it appeared to have been known at London and to Secretary Stair in January that Glenco had taken the oath; for in his letter of 30th January to Sir Thomas Livingstone, the Secretary said, 'I am glad that Glenco came not in within the time prescribed.' 3d, That there was nothing in the king's Instructions to warrant the committing of the foresaid slaughter even as to the thing itself, and far less as to the manner of it; and that he ordered nothing concerning Glenco and his tribe but that if they could be well separated from the rest, it would be a proper vindication of public justice to extirpate that set of thieves; which plainly intimates that it was his Majesty's mind that they could not be separated from the rest of these rebels unless they still refused his mercy by continuing in arms, and that even in that case they were only to be proceeded against in the way of public justice, and no other way. 4th, That Secretary Stair's letters, especially those of the 11th, 16th, and 30th January 1692, were no ways warranted by, but quite exceeded, the king's instructions; since the said letters, without any insinuation of any method that might separate the

Glenco men from the rest, did, in place of prescribing a vindication of public justice, order them to be cut off, and rooted out in earnest, and to purpose, and that suddenly and secretly and quietly, which are the express terms of the said letters; and comparing them and the other letters with what ensued, they appear to have been the only warrant and cause of the slaughter, which in effect was a barbarous murder perpetrated by the persons deponed against. This being yet farther confirmed by the Master of Stair's letters to Colonel Hill of 5th March and 30th April 1692 (above referred to)."*

After all the heat occasioned by the reception and discussion of the report, the parliament, under the guidance probably of Tweeddale, took a very inconsistent view of the whole subject and of the guilt of the parties concerned. It was voted that the king's Instructions of January 1692 contained no warrant for the execution of the Glenco men in February, and that the Master of Stair's letters exceeded the king's Instructions.† Another vote, affirming the execution of the Glenco men, as presented to the parliament, to be a murder, was also carried.

During the course of these proceedings a printed Paper, entitled "Information for the Master of Stair," temperately written, and making what points were

* The original of the Glenco Report was either suppressed or was lost, and no perfectly authentic double of it is known to exist. A copy, which has been regarded as sufficiently authenticated for historical purposes, was first printed and published in the reign of Queen Anne by B. Bragge, London, 1704. Bragge's pamphlet, which contained the Report and some other proceedings, has been reprinted in the Miscellanea Scotica, Edinburgh, 1818. The reprint in Carstairs State Papers is probably from the same source.

† Act. Parl. Scot., ix. 397.

possible in his favour, was circulated among the members of parliament. It stated, in the commencement, that his friends conceived him to have been "mightily prejudged by the Report of the Commission, which notices particular sentences or periods of certain letters of his, suppressing other material periods of the same letters, and from whence consequences are drawn which cannot follow upon a due consideration of the whole." The Parliament, in its present temper, was not disposed to submit to any such arraignment of the Report and of its own votes as was implied in this defensive pleading; and a resolution was accordingly moved and carried, censuring the author (who proved to be Mr Hew Dalrymple, younger brother of the Master of Stair), and finding the Paper to be false and calumnious.*

After various motions as to the degree of culpability attaching to the military officers, the Parliament agreed upon an Address to the king,† which, after referring to the previous votes, proceeded: "This being the state of that whole matter, as it lies before us, and which, together with the Report transmitted to your Majesty by the Commission, gives full light to it, we humbly beg, considering that the Master of Stair's excess in his letters against the Glenco men

* This "Information" drew forth "Answers" on the part of the Lord Advocate, supporting the Commission's Report and the votes of the parliament. Both these papers are printed in the Papers Illustrative of the Highlands, the latter being backed, "Answers to the Information for the Master of Stair upon the affair of Glenco, wrote by Thomas Spence, and corrected by Sir James Stewart, Lord Advocate, his master."

† July 10, 1695.

has been the original cause of this unhappy business, and hath given occasion in a great measure to so extraordinary an execution by the warm directions he gives about doing it by way of surprise, and considering the high station and trust he is in, and that he is absent,—we do therefore beg that your Majesty will give such orders about him for vindication of your Government as you in your royal wisdom shall think fit.

"And likeways, considering that the actors have barbarously killed men under trust, we humbly desire your Majesty would be pleased to send the actors home, and to give orders to your Advocate to prosecute them according to law; there remaining nothing else to be done for the full vindication of your Government of so foul and scandalous an aspersion as it has lain under upon this occasion."

In accordance with this address, a show was made of bringing several of the immediate and subordinate actors to trial, but no serious proceeding was ever instituted against any one concerned. As a result of the view taken by the Commissioners and by Parliament, the Master of Stair retired from his office of Secretary in the summer of 1695—a step which could hardly be avoided;* the question of blame as between the king and the secretary being shortly summed up in one sentence of a letter from the solicitor-general Ogilvie to Carstairs—"The Master of Stair is indeed loaded to purpose [in the Report and Ad-

* Bishop Burnet, in his Memoirs, talks of the king dismissing the Master of Stair from his service in 1692, although, as stated in the text, he continued Secretary of State till after the publication of the Glenco Report in 1695.

dress]; but thereby the king is most justly relieved of all the aspersions raised in that affair of Glenco; and I doubt not the Master's letters and our votes, both in the Commission and Parliament, when compared, will justify us that we have proceeded impartially." *

* July 23, 1695—Carstairs State Papers.

CHAPTER IX.

The Master becomes by his father's death Viscount Stair, but refrains from taking his seat in Parliament—The king grants him a remission and pardon, as not having been accessary to the barbarous manner or mode in which the actors in the massacre of Glenco had executed their orders—After an interval of years resumes his part in public affairs—Is created an Earl by Queen Anne—Writes on the state of parties to Lord Godolphin—And on the Union negotiations to Secretary the Earl of Mar—Takes a prominent part in furthering the treaty of Union—His death and character.

The Lord President Stair's death occurring in November 1695, the Master became Viscount of Stair, and, withdrawing for a time from public life, went to reside upon his estates in Scotland. Such was the condition of public feeling on the subject of Glenco, that he prudently refrained, with the king's knowledge and assent, from taking his seat as a peer of Parliament.

That William, as may very naturally be supposed, did not take the same view as the parliament and the commission of the secretary's culpability, is evident from the fact of a royal mandate having been issued, towards the end of the year, for a letter of remission to Viscount Stair, freeing him from all the consequences of his participation in the slaughter of Glenco:—

"His Majesty, considering that John Viscount of

Stair hath been employed on his service for many years, and in several capacities—first, as his Majesty's Advocate, and thereafter as Secretary of State—in which eminent employments persons are in danger, either by exceeding or coming short of their duty, to fall under the severity of law, and become obnoxious to prosecutions or troubles therefor; and his Majesty being well satisfied that the said John Viscount Stair hath rendered him many painful services, and being well assured of his affections and good intentions, and being graciously pleased to pardon, cover, and secure him, now, after the demission of his office and that he is divested of public employment, from all questions, prosecutions, and trouble whatsoever; and particularly his Majesty, considering that the manner of execution of the men of Glenco was contrary to the laws of humanity and hospitality—being done by those soldiers who, for some days before, had been quartered amongst them, and entertained by them, which was a fault in the actors or those who gave the immediate orders on the place—but that the said Viscount of Stair being at London, many hundred miles distant, he could have no knowledge of nor accession to the method of that execution; and his Majesty being willing to pardon, forgive, and remit any excess of zeal, as going beyond his instructions, by the said John Viscount Stair, and that he had no hand in the barbarous manner of execution: his Majesty therefore ordains a letter of remission to be made and passed the great Seal of his Majesty's ancient kingdom," &c.*

* Papers Illustrative of the Highlands, p. 143. This carefully drawn document bears to be printed from a Scroll of Discharge to John

This remission, by royal letter or Rescript, which was of more legal force according to the old Scottish than according to English constitutional law, was immediately followed by a substantial mark of royal favour in the shape of a gift of bishops' rents and feu-duties in the barony of Glenluce, to Viscount Stair and his heirs, for payment of two competent stipends to the minister of the parish of Old Glenluce, in which Stair was the principal heritor, and to the minister of a new church about to be erected in the same parish.*

During the ensuing two years Lord Stair resided in comparative seclusion, for the most part of the time at his house of Newliston. In 1698, a strong attempt was made by the Earl of Seafield, Lord Tullibardine, and others, in favour of his taking his seat in parliament; "but" (Lord Seafield writes to Mr Carstairs) "the Justice-Clerk [Cockburn] was positive that if my Lord Stair did offer to sit in Parliament he would call for the votes and Address passed in the '95 concerning the matter of Glenco; and, after this, if the vote had carried, 'Allow my Lord Stair to sit,' when the Commissioner had not written, we might have been blamed for it." To the same effect, the royal Commissioner to Parliament (Earl of Marchmont) wrote to the king that "the Viscount Stair, intending to come into the House, it

Viscount Stair, preserved in the private archives of the Stair family, the original deed having been probably destroyed by the fire at Castle Kennedy in the year 1717. It makes the strongest case possible for a bad cause; the argument embodied in it applying, in the concluding part, to the defence of the king as well as of his secretary.

* Papers Illustrative of the Highlands, p. 143. This deed, like the former, bears to be printed from a scroll. As possession followed, and has since continued, upon the grant conveyed by it, there can be no doubt of its authenticity.

raised a humour among the members which obliged me to interpose for dissuading him, wherein I with difficulty prevailed."*

Sir Hew Dalrymple, third son of the first Lord Stair—a sound lawyer, as well as a gentleman of worth and amiable character, without the brilliant talents of his father and brother—was now president of the Session, having been appointed in 1698 to that office, which had been vacant since the late Lord President's death in 1695.†

Through the influence of Sir Hew, and the mitigation by time of the opposition to his entering Parliament, Stair was enabled to take the oaths and his seat in February 1700,—an important part being still reserved for him to play in that assembly upon the great occasion of the legislative Union of the kingdoms. Upon the accession of Queen Anne, in March 1702, he was sworn a Privy Councillor, and took part in the proceedings of the last session of the old Convention parliament of William, which (contrary to the constitutional rule upon the death of a sovereign) was allowed to meet in June. The Duke of Hamilton and a respectable minority declined sitting in this rump Parliament, which was presided over by the Duke of Queensberry (then secretary for Scotland) as royal Commissioner. Several important Acts of a formal character, recognising her Majesty's

* August and September 1698—Carstairs Papers, and Marchmont Papers.

† This delay in appointing a President of the Court of Session was occasioned by the interest made for Sir William Hamilton of Whytlaw by the Marquis of Athole, Secretary of State for Scotland, the king ultimately deciding in favour of Dalrymple. Letters of Sir Hew Dalrymple will appear in the Life of his nephew, the second Earl of Stair.

authority, ratifying and confirming the Presbyterian church government, and enabling the queen to appoint commissioners to treat as to a Union of the kingdoms, were passed without much difficulty. The parliament was soon after dissolved, and a new parliament called for May 1703—the last Scottish Parliament. Previous to the meeting of the new parliament, Viscount Stair, whose ability in counsel and debate was fully appreciated by the Godolphin Administration, received an accession of rank, and became Earl of Stair.* He held no office of State under Queen Anne.

The Duke of Queensberry was again sent down as Commissioner to the Parliament; but the recent elections had brought together a new set of men, and given rise to difficult complications. In the course of the session, Lord Stair wrote to Lord Treasurer Godolphin the following letter on the state of parties in the Scottish parliament, distinguishing the Presbyterian, the Cavalier or Episcopal, and the Duke of Hamilton's party, sometimes called the *Squadrone volante.*†

"My Lord,—The duty I owe your Lordship, and the interest I know you have in her Majesty's affairs,

* April 1703.

† This hitherto unpublished autograph letter of Lord Stair to Godolphin was acquired at the sale of the Duke of Leeds' family papers, at Sotheby's, London, in 1869, by John Webster, Esq. of Aberdeen, in whose possession it now is. It is undated, but from internal evidence, was probably sent to Lord Godolphin in the first session (1703) of Queen Anne's new parliament. A letter of Lord Godolphin to the Scottish Chancellor, the Earl of Seafield, from an autograph copy also among the Leeds papers, which, from its date, July 17, 1703, must have been written during the same session of parliament as that of Stair to Godolphin, is printed in the appendix to this chapter.

make me presume to lay before your Lordship the present state of business here, with my thoughts in relation to the success of this session of our parliament. In the last parliament there was but two parties, one with Duke Hamilton, who seemed displeased with the measures of the Government; the other was willing to support it in conjunction with the ministers of State. In this parliament there appears a third party, which had lain off during the last reign, but seems to enter now into her Majesty's interest: we call this the Cavalier or Episcopal party.

"Had there been no more designed in this session but the ratifying the last, the approving her Majesty's accession to the duties of the royal Government, and getting cess [taxes] for some time, then the faction had been entirely defeated, and it had been easy for her Majesty to have done what else in another session there might seem reasonable and just; but the jealousies and animosity of the Presbyterians and Cavaliers (there being a third party on the field) renders it very hard to carry on the public affairs, because either party, when they do not obtain their pretension, by going into the Duke of Hamilton's party become the strongest. This did at first stop the choosing of committees, because our friends, though the greater numbers, yet would not agree upon the same persons to be named on these committees; whereby Duke Hamilton's people, though fewer, yet being united, and making their lists of the same persons, might either vary the committees or mix them so as to obstruct instead of preparing business. Therefore we have been obliged to do all in plain parliament [*en plein Parlement*]. In the

first votes both Cavaliers and Presbyterians did concur to have the exercise of her Majesty's Government recognised, as well as her right and title. From this beginning there was good appearance of success, and before any differences should fall out, the Queen's servants were encouraged to proceed to the supply.

"Both the parties became jealous that if once the cess was given, then they should fail of their pretension, and the parliament would be adjourned; and there was a general combination, in which not only Duke Hamilton's people, but both Cavaliers and Presbyterians, did enter into a resolution not to give cess, nor proceed to any business till first our religion, liberty, laws and trade were secured. We did struggle a whole day against a resolve in so general terms, till next morning two of the Cavaliers were sent from their meeting to tell my Lord Commissioner that they would leave him and enter into the general resolve.

"Though there are a very considerable number of persons both of interest and good sense who will not depart from his Grace nor the Queen's service, yet there being such a treachery and madness on all sides, we could neither resist, nor was there opportunity to feel their pulses in committees; therefore we did submit to necessity, knowing that so considerable a number remaining with the Lord Commissioner, these different parties would soon come to break amongst themselves, and the Queen's servants would always cast the balance in a short time. So there came in a multitude of Acts, and more are designed, whereof the most part are for cutting off

the prerogative from the successor, in case of her Majesty's death without issue of her body. There was one Act given in by the Marquis of Athole for securing the kingdom and the naming a successor upon the queen's decease, which in the proposal appears not ill; but I am afraid all the bad humours of the other Acts may come to be cast in with the clauses of this, and I wish it had not proceeded from the throne.* The Duke of Argyle got in another approving the Revolution and the turning the Estates into a Parliament; the Earl of Marchmont got in a third for security of religion and Presbyterian government.† These two last are passed, by which it appears the Presbyterians are the strongest in the House.

"The Cavaliers brought in an Act for toleration; and after some warm reasoning it was let fall for that time, and some proposals made for an union or comprehension of the two persuasions, which is more reasonable than it is practicable, except there were a steady State which might oblige both sides to reason. By this delay the Cavaliers are discouraged, and Duke Hamilton doth endeavour to profit of our divisions. Therefore to retain the Presbyterians, he did vote for the Act establishing and confirming Presbytery; and to engage the Cavaliers, he declared he was for toleration, which hath so offended the Presbyterians at his Grace that a good number of his old set have quitted him; and having got satis-

* The second Marquis of Athole was at this time Lord Privy Seal of Scotland, and on 30th July of this year [1703] was advanced to be Duke of Athole. No Act was passed in this session touching the succession to the crown.

† Anne (1703), c. 2 and 3.

faction in the two Acts passed, they do generally promise to be for two years' cess to pay the army; and that they shall not enter into these new projects to restrict the monarchy, but shall concur with the Queen's servants to throw out these motions, and leave the parliament or States after the Queen's death to make what terms with the successor they please, which will be more proper than in her life.

"The Cavaliers' principles, and the service they pretend for the queen, obliges them neither to oppose cess, nor yet to join in those measures that will diminish the royal authority, except the rancour against Presbyterians engage them to concur with Duke Hamilton to break this parliament, in hopes that another will serve their turn better; whereas I believe the Cavaliers will hardly be stronger in a new parliament; and besides the ferments it would create in the nation, the south and west countries would choose their representatives of the most rigid and bigoted Presbyterians or Republicans that could be found, which would put matters in worse condition than at present. Yet the hazard of a new parliament makes the Presbyterians more tractable and willing to give supply. They see that whoever brings in these encroachments on the monarchy, everybody will lay it at their door: because in former times Presbyterians did such things, and they will not willingly lose the assurances they have from the Queen; and their leaders are sensible they have gone a little out of their way, and are willing to have the reputation that they could both put things wrong and restore them.

"The aspect of our affairs is somewhat better than

it was, and I believe, with patience, in a short time we shall come to rights. The supply will be obtained without further invasion of the prerogative; and if the Presbyterians, without whom we cannot do our business, shall come again to fail [us], then their settlement will not receive the royal assent: so their affairs should be more perplexed and uncertain than they are at present. I do not believe my Lord Commissioner will trust them so far as to touch their Acts with the sceptre till the supply be ready too.

"For the toleration, I confess it is reasonable; but there hath been so much noise and bustle about it, and so many wild pamphlets dispersed, treating both the Revolution and the Presbyterian government so harshly, that many who were for the toleration do not think it of that consequence as to lose the Presbyterians for it, who are the most numerous and the most eager party in the parliament. Some of the Cavalier lords who have been willing to advance her Majesty's service may be gratified, which will retain them without giving offence to others.

"My Lord, I have great cause to crave pardon for so tedious a letter to a person charged with so great affairs; but I thought it necessary your Lordship should know how matters are, and what may be expected, as 'tis all I can contribute to her Majesty's service. But there neither hath nor shall anything in my power be wanting whereby I may approve myself, &c. STAIR."

In this letter, or rather State paper, one cannot avoid remarking the sagacity as well as coolness and *sang froid* of the political leader trained in a factious

My Lord I had great cause to crave pardon for so tedious a
Letter to a person charged with so great affairs but I thought
it necessary yr Lop: should know how matters do and what
may be expected As to the I can contribute to his majtys service
but therein hath nor shall any thing in my power be
wanting whereby I may approve myself

My Lord

yr Lop: most humble and obedient servant

Stair

age, showing no serious conviction in favour of any of the parties of the Scottish parliament, but proposing to manage all of them so as best to carry on the queen's Government. In the stormy debates which soon afterwards took place, prior to the passing of the Act of Union, Lord Stair's ability in argument and power of speech found ample field for their exercise in promoting that important treaty.

From the factious intrigues of the leaders of the various parties, and the disastrous result of the Scottish project of a commercial settlement at Darien, the relations between the kingdoms had been gradually embittered to such a degree that, when the negotiation of the treaty was about to open, it became obvious that the question was between a separate unfriendly independence of the two states and a union more or less complete, with a communication to Scotland of the colonial trade and commercial privileges enjoyed by Englishmen. The union of the crowns not meeting the exigencies of the case, it was now come to an issue of open hostility or closer union. The conduct of the proceedings in Parliament was committed to the Duke of Queensberry as royal Commissioner; but it has been generally believed that the labour of suggesting plans and provisions, and putting them in shape to the satisfaction of his countrymen, was thrown on the stronger capacity of Lord Stair.* There can be no doubt that the Duke of Queensberry leant greatly upon Stair, and highly valued his support.†

* Burton's History of Scotland.

† Secretary Johnston to the Earl of Roxburgh, April 17, 1706—Jerviswood Correspondence (Bannatyne Club), p. 152.

The following letter was addressed by him, in January 1706, to John Earl of Mar, then Secretary of State for Scotland, and is preliminary to the discussion of the treaty of Union by the English and Scottish commissioners. It shows forcibly what difficulties lay in the way of a complete incorporating union up to the very moment when the Commissioners were preparing to take it in hand. Stair considered the immediate settlement of the succession (to which there had been great opposition in Scotland, especially by the Presbyterian party*) of paramount importance at this juncture, as in connection with the union of the kingdoms.

"*January* 3, 1706.

"My Lord,—I acknowledge the honour of yours of the 25th past, in which your Lordship hath been pleased to give me a full and clear view of our affairs, how far they have been successful, and where there is danger that they may miscarry. I am well convinced the English have done very handsomely and obligingly in repealing all the clauses of their Act which were either injurious or grievous to us;† and tho' there were no more success to be hoped for from the treaty, yet that same was well worth all the struggle we had to obtain it, and it carries an use of reproof to two sorts of people, either those who would not enter into a treaty because they pretended no good would be got by it, and others who were so fond as

* See Letters of the Earl of Leven, and of Mr Harley to Mr Carstairs—Carstairs State Papers, 717.

† This probably refers to an English Act previously passed as to Trade.

to have rendered without any terms, to which it was impossible to have brought our nation or parliament. I shall be sorry if the English insist too peremptorily upon an entire union at present. Your Lordship knows my sentiments in that matter, that I do firmly believe an incorporating union is the best for both nations, but that may require more time than the present circumstances do allow; for if we should be so unhappy as to be deprived of her Majesty before the succession is settled, great mischiefs may follow. Therefore, I wish that upon the settling of a free trade betwixt the nations and all freedom to their plantations, the succession were presently declared in our next session of parliament, and that the treaty of a general or entire union did likewise proceed so as a scheme thereof might be offered to both parliaments; and if more time were found to be necessary for that, yet it needed not stop the other from being presently concluded and declared.

"For the nomination [of commissioners], I think your Lordships have done your part in stating the difficulty, and giving the general opinion. I conclude the court will hardly adventure to make another mixture without either ours or the opinion of our friends there; and if they be of another mind, I think it is your part to submit. If that alley brings the matter to a good conclusion, it is not to be considered by what hands; and if the affair miscarries, you are exonered. But I am afraid another step of this kind will render Duke Queensberry so jealous that he will not meddle, and your Lordship may consider how the business can succeed without him. It's a great happiness for the public, and security for yourselves, that the two [Scot-

tish] secretaries and the great men in the government are of the same sentiments. So long as you continue so, it is impossible for business to miscarry; it may stick at one time, but it will do at another. All the opposition can only retard; but without this settlement there is nothing considerable, either ill or good, can be done with us. But though you should not come to open breaches, if there arise diffidence or shyness amongst you, then you ruin yourselves, your friends, and country; therefore the common interest is more to be minded than the particular part that every man is to act. Nor is it always the greatest actor that represents the greatest person, but the several parts are to be given so as the whole plot may be best executed. It is only in this point that I fear heart-burnings may arise. The court and our friends there should digest and prepare this matter, and I hope the persons shall acquiesce in what parts friends do assign them; and whoever be the principal actors, they should be contented to act with concert, and to allow others the share of the influence and disposal of things according to their interest and weight in the party.

"I do not believe the two Dukes will differ in relation to the Marquis Annandale; he must either reconcile and quit his humour before the nomination, or there's an end of him. And there will be the more need of caution to retain our friends here, and care to take of some that were in opposition. In order to retaining friends, it is absolutely necessary to finish what was designed for the northern squadron. I know it is not your Lordship's fault that Grant is not provided as yet; but except Kilraick be sheriff of

Ross, they will never be hearty, for he manages the rest; and George Brodie is earnest that Captain Brodie be the under-chamberlain of Ross, which hath some difficulty; but it must either be done or that kept fair in expectation, which will have great influence in the north. For, though that corner, which has many representatives, is the most disaffected to the present establishment or the succession, yet the matter of trade is more in their heads than any others in the nation, which may make them care in the parliament to ratify those good terms that may be obtained in the treaty. Forgetting of some of the opposers, I wrote formerly to Earl Loudoun how little I believed of advances had been made by the leaders. Lord Arniston is very current for the treaty, and that we should take the best terms we can get—for breaking up is ruin; and he says he would not stick at getting an act of grace, and more, which is a far advance. He is the baron in parliament, and you will find few of his state to be put upon the treaty. There is indeed a charm in being engaged into a party, for common cants take men off from their own reason; but yet, if he were named on the treaty, I think I could answer for him; and he is certainly for the constitution. . . . For military matters, I pretend not to understand them. All these gentlemen are so touchy that they are ready to mistake or quarrel even what is done for their service to accommodate matters. I must say the officers of our army, having not frequent occasions of fighting for us, are to be otherwise useful; and there is such a connexion and dependence betwixt the State and our army that the nomination of officers never was out of the hands

of the ministry. No doubt great regard will be had to the recommendation of the Commander-in-chief as to the recommending of staff officers, and to colonels for their subalterns, where no other reason of State interferes. As for a new parliament, I wish this were better; but till it fail us, I would not try another, lest that be worse. I must say the parliament never failed where the ministry was not divided; and in the new elections, the party in opposition will have the advantage of us in diligence; and a person inclined to the court is easy put by from being chosen in his country. It would raise a new ferment, whereas our humours rather cool; and it is too true that men who design easy fair things are seldom so active as those who have worse intentions.* . . ."

The managers for the Government, assisted by Lord Stair, had a hard fight in the Scottish parliament on the point whether the Scottish commissioners for negotiating the treaty should be chosen by the queen or the parliament. Their nomination by the Crown was only carried by the help of the *Squadrone volante*, much to the discomfiture of Lord Belhaven, Fletcher of Saltoun, and their friends, who now called themselves the National Party. When the Commissioners came to be finally appointed in the spring of 1706, thirty-one for each nation, those for England consisted mostly of peers and official persons, while the nomination for Scotland was of a more general and representative character, including commoners of local influence in the country, as well as peers, and several, both peers and commoners,

* From the original in the Mar charter-chest.

who had been opposed to the Revolution settlement, and whose sentiments were reputed to be unfavourable to an incorporating union. Lord Stair and his brothers, President Sir Hew Dalrymple, and Sir David Dalrymple, then solicitor-general for Scotland, were all in the Scottish nomination.

It was generally believed to have been a piece of policy suggested by Stair, with the view of the treaty, when negotiated, being more readily agreed to by the Scottish Parliament, to include amongst the commissioners persons of influence in Scotland, indisposed perhaps *a priori* to union, but who might, notwithstanding, be engaged to show a certain degree of favour for a treaty in which they themselves had a hand.* But if any credit be due to the adviser of this subtle policy, Lord Marchmont was quite as much entitled to a share of the credit as Lord Stair.†

The two bodies of commissioners assembled in London at Whitehall on the 16th April 1706. The proceedings during the negotiation of the treaty were secret; so that, although the main points in issue and the decisions of the joint Commission were shortly noted in their minutes, no record exists of the speeches or part taken by the individual members. From what is known of Stair, it may be taken for granted that he was conspicuous among the Scottish commissioners in expediting the negotiation of the treaty to a conclusion in the face of great difficulties. On the 23d of July, the articles of the treaty were pre-

* Burnet's History of his own Time, v. 317; Tindal's Continuation of Rapin's England, anno 1706.

† Earl of Marchmont to the Duke of Argyle, Dec. 29, 1705—Marchmont Papers, iii. 293.

sented to her Majesty, and in October they were laid before the Scottish Parliament.

The treaty met with a stormy reception in Scotland, both in and out of Parliament. Within that assembly all Lord Stair's powers of reasoning and argument, all his eloquence and skill in debate, were called forth to meet the elaborate declamation and strong appeals of Belhaven and the other champions of Scottish nationality. His energies were exerted, indeed, to a degree of tension that may well account for the fatal issue to himself of the discussion of the Union question in the last Scottish parliament. On the 7th of January 1707, the 22d article of the treaty (the last of any importance), in which the proportion of representation to be allotted to Scotland in the united parliament was regulated, was at last carried after a long and harassing debate. In the course of the ensuing night, Lord Stair died suddenly in bed, "his spirits," according to Bishop Burnet, "being quite exhausted by the length and vehemence of the debate."*

* Burnet's History of his own Time, v. 324. The Scottish Act ratifying and approving the Treaty of Union of the two kingdoms was passed eight days after Stair's death.

So eager were the opponents of the Union to catch at anything affecting injuriously so determined a supporter of the measure, that they circulated a report, without any foundation, of Lord Stair having committed suicide. In the Memoirs of John, second Earl of Stair, by an Impartial Hand, which are ingeniously calumnious of the Stair family, the fable is adopted of the first Earl having hanged himself. The second Earl himself, in a letter applying for a British peerage in February 1707, alleges more truly that his father's zeal for the Union cost him his life, "having allowed him no time to take care of his health, though he perceived it ruined by his continual attendance and application."—Marchmont Papers, iii. 447. Earl Stanhope's reference to Stair's decease, in his Reign of Queen Anne, is in the following terms: "Thus he had the honour, which a better man might envy,

Upon the 21st January following, after the Act approving the treaty of Union had passed, Lord Stair's eldest son took the oaths and his seat in parliament as Earl of Stair. Daniel Defoe, who was then in Edinburgh, makes the following observation, in his 'History of the Union,' on the Minute of parliament in which this is recorded:* "The reason of the Earl of Stair taking the oaths now and his place in parliament, was very unhappy at this time; his father, the Earl of Stair, justly reputed the greatest man of counsel in the kingdom of Scotland, died suddenly the eighth of this month; he had been an eminent instrument in carrying on the Union, and had, the very day of his death, spoken very earnestly in the House upon some particular cases relating to the Union; he went out of the House not very well, yet went home and wrote several letters that very night to England, and in the morning died in his bed without being able to speak so much as to his lady, who was with him, to the general grief of the whole island, being universally lamented.†

to die in the service of his country—striving to the last by voice and vote to carry through a measure essential at that period, as he knew, to its peace and welfare."—(P. 272.) The entry in Hume of Crossrigg's Diary (Bannatyne Club) is as follows: "Wednesday, Jan. 8. This morning the Earl of Stair, who was yesterday in parliament, died of an apoplexy. This day spent in jangling, and nothing done." —(P. 194.)

* P. 491, Edition 1786.

† About the end of the 17th and beginning of the 18th century, upon the death of a person of note, an Elegy or short funereal poem, composed usually, but not always, in praise of the deceased, was not uncommonly printed on a broadsheet, and circulated. These sheets of poetry were adorned with broad black lines, death's heads, and other emblems of mortality. In a volume of pamphlets of the time in the Advocates' Library, Edinburgh, is preserved an Elegy "upon the much-lamented death of the Right Hon. John Earl of Stair," containing up-

Defoe may be regarded as retailing the current talk of the day among Stair's friends and the Government party; and his laudatory notice tends to show that the strong feeling manifested against Lord Stair after the affair of Glenco had in a great measure subsided, while the exertion of his powerful talents in support of the Union had placed him high among Scottish statesmen.

His character has been given at length in the Memoirs of a political and personal adversary, George Lockhart of Carnwath. Lockhart's sketch concludes thus: "Stair had indeed a piercing judgment, a lively imagination, a quick apprehension, a faithful memory,

wards of an hundred very indifferent lines, of which the following are sufficient as an example:—

"Nature did courage to these parts subjoin,
Which made him feared by all, he fearing none;
Therefore, as right, he claims a double crown,
One for the sword, the other for the gown. . . .
The Union shall perpetuate his name
As long as there's an ear or mouth in fame. . . .
Which has been hatching long through ages past,
And brought to birth by help of Stair at last."

A Jacobite song upon the Union in Hogg's 'Jacobite Relics' (parodying the old song of "Fy, let us a' to the Wedding") commences thus:—

"Now fy let us a' to the Treaty,
For there will be wonders there,
For Scotland's to be a bride, sir,
And wed to the Earl of Stair!"

The poetry elicited by Lord Stair's death was not all in a laudatory strain. An Epitaph upon him may be read by the curious in the Scottish Pasquils of Mr Maidment, commencing as follows:—

"Stay, Passenger, but shed no tear,
A Pontius Pilate lyeth here,
Whose lineage, life, and final state,
If you'll have patience, I'll relate.
Got by Beelzebub on a witch," &c., &c.

a solid reflection, and a particular talent of dissimulation and cunning in their greatest extents; so that he was seldom or never to be taken at unawares. He was extremely facetious and diverting company in common conversation, and, setting aside his politics (to which all did yield), good-natured. To these qualifications was likewise added that of eloquence, being so great a master of it that he expressed himself on all occasions and subjects with so much life and rhetoric, and that likewise so pointedly and copiously, that there was none in the parliament capable to take up the cudgels with him."

Several of these features of character were remarkably brought out in the Convention parliament, and in the last Scottish parliament, when, in the face of strong prejudices, both personal and political, he yet carried, with very moderate assistance in debate, the most important resolutions and measures. That in the ten years preceding the Revolution he showed himself a supple politician, too dexterous to be much relied upon, may be true; but some allowance should be made for him in consideration of the times he lived in, political honesty in high places being then rather the exception than the rule. He was regarded by the zealous Presbyterians as latitudinarian in his views of religion, for which opinion of him there may have been good reason when holding office under James. After the Revolution it is more difficult to take exception to his strenuous endeavours to have Presbyterianism settled upon a safe foundation, and so as to be consistent with monarchical government, and to extend (in the lines marked out by William himself) toleration and protection to such of

the Episcopal communion as were willing to accept of these boons. If, in an age when intolerance was the rule, freedom from intolerance be a virtue, to the credit of that virtue he is undoubtedly entitled.

In the public life and conduct of the first Earl of Stair, intellectual power and great talents were more conspicuous than high moral qualities. But of him it may be said in the words of Shakespeare :—

> "The evil that men do lives after them,
> The good is oft interred with their bones."

His name is now very generally associated with the barbarous affair of Glenco, the blame of which his royal master must share with him in at least an equal proportion; while his unswerving fidelity in an intriguing age to King William, his exertions to allay religious heats and animosities, and, above all, the powerful aid he gave in bringing the Treaty of Union through a host of difficulties to a favourable issue, are merits of a high order, though in comparison but slightly regarded.

L OF STAIR

SECOND EARL OF STAIR

BORN, 1673; *DIED*, 1747.

SECOND EARL OF STAIR.

CHAPTER I.

Early life and training of John Dalrymple, second Earl of Stair—His destination for the army—Accompanies his father to Flanders, and commences his military career under King William—Serves in the army of Marlborough, and receives the colonelcy of the Scots Greys —Letters to the Earl of Mar, Secretary of State for Scotland, from the seat of war—Becomes Earl of Stair on the death of his father— A representative peer of Scotland in the first British Parliament.

John Dalrymple, eldest surviving son of the first Earl of Stair, was born at Edinburgh in July 1673. In his boyish pastimes he is said to have shown a decided predilection for martial pursuits, to which, in selecting for their child a career in life, his parents, with some hesitation, gave way, bestowing upon him, at the same time, a careful education. For home-training he was chiefly indebted to his mother, the heiress of the estate of Newliston, whose letters to him, of a later period, show her to have been thoroughly well versed in the management of domestic affairs, and to have been imbued with religious sentiments of a considerably more pronounced character than those of her son.

The fatal accident by which he unintentionally

shot his elder brother with a pistol, in his grandfather's house at Carsecreugh, has been already noticed in the life of the first Earl. It is said that the grief of his parents upon this occasion induced them to send young John Dalrymple for some time from home. It was probably during this period that he resided in the house of the rector of the burgh school of Linlithgow, Kirkwood by name, a good classical scholar, and author of a Latin grammar which was generally used in Scotland till superseded by that of Ruddiman.*

When about twelve years of age he was sent to Leyden, where his grandfather was then living. Here he attended the university classes, studying languages, fortification, and other branches of education.† As an inmate of Sir James Dalrymple's house, he would have an opportunity of becoming acquainted with several distinguished exiles from his own country, and would be thrown into the occasional society of military men, both British and Dutch, as well as of his grandfather's associates. He returned to Scotland before the Revolution, and completed his education at the University of Edinburgh.‡

* Statistical Account of Linlithgowshire.

† Douglas's Peerage, by Wood.

‡ It is only when their narratives are confirmed from other sources that I can refer with any satisfaction either to the Memoirs of the second Earl of Stair, by an Impartial Hand—London, 1747; or to the Life of Lord Stair, published by Henderson, London, also in 1747. They are both inaccurate. The first of these duodecimos (to which Sir Walter Scott refers in the Introduction to the 'Bride of Lammermoor') is said to have been bought up, and the remaining copies destroyed, by Lord Stair's successor. The other is so full of vague writing and absurd panegyric as entirely to affect its credibility.

In 1692, John Dalrymple accompanied his father, then Master of Stair and Secretary of State for Scotland, to Flanders, in the *cortège* of King William, joining the allied army as a volunteer in the Cameronian regiment, afterwards the 26th of the line.* This regiment, known in contemporary history as Angus's (the regiment of Sterne's Lefevre), was severely handled at the battle of Steinkirk in that year, the young volunteer being amongst the few belonging to it who escaped with their lives. He appears to have passed the winter of 1692 in Holland; but whether, in 1693, he rejoined the army and was at the battle of Landen, or in 1695 was at the siege of Namur, there is no certain information.

Becoming Master of Stair upon his father's succession to the peerage in 1695, he passed the five following years between the seat of war on the Continent and Scotland. In 1700 he accompanied Lord Lexington in an embassy to Vienna; after which he made a tour in the south of Europe, visiting the states of Italy in the course of his travels, and returning to England in 1701.

Having gone through the lower military grades, he was appointed, shortly before the death of William in that year, to a command in the Scottish Foot Guards, his commission being one of the first signed by Queen Anne.†

He now pursued his military career with ardour under the leadership of Lord Marlborough, and in the first year of the operations of the allied army

* Cannon's Historical Account of the Scots Greys. London, 1836.
† Ibid.

in Flanders, did duty as his aide-de-camp. He was with the storming party, under the "fighting Lord Cutts," at the taking of the fort of Venlo,* and he assisted at the storming of the citadel of Liège, where he is said to have saved the life of the Prince of Hesse-Cassel, afterwards King of Sweden, by shooting with his pistol a French officer who was on the point of cutting down the prince with his sabre. I have no account of his taking part in the battle of Blenheim, though it is possible he did so.

In the campaign of 1705 very little was accomplished, owing to the indecision and procrastination of the Dutch deputies. In furtherance, probably, of Marlborough's desire to strengthen his interest with his Dutch allies, Lord Dalrymple (his father being now Earl of Stair) had a commission given to him as colonel of a regiment in the service of the States. The pay must have been scanty, as, in a letter to the Earl of Mar in November of this year, he complains that his regiment is far from giving him bread; and upon the ground of his father's services to the Queen, he applies, through Mar, then Secretary for Scotland, for a colonelcy in the Guards.† Lord Mar advised his friend "Dal" to come himself to London; and his application appears to have been so far successful that in January 1706 he was allowed to exchange his Dutch commission for the colonelcy of his former regiment, the Cameronians. He was present at the battle of Ramilies, in May, with the

* Lord Cutts (to whom Steele, in 1701, dedicated his "Christian Hero") was colonel of the Coldstream Guards, and was sent, after the war, to Ireland, where he died, according to an historian of the period, "of a broken heart from inaction."

† Letters in the Mar charter-chest.

rank and command of brigadier-general. In June following he addressed this letter to the Earl of Mar, from the camp at Artille : *—

"Though 'tis late, and I am afraid my letter may miss the post, I won't delay answering your letter, dear governour, of the 24th. I was mighty glad to see I was not quite forgot, which I began to be a little afraid of. I know you have a thousand things to hinder your bestowing your time so idly. If it was only laziness, I have fellow-feeling enough to forgive you. I am heartily glad your Union goes well. With a little patience, notwithstanding your secrecy, we shall come to the knowledge of the particulars. I hope the Duke of Marlborough's good success will help our Parliament to digest the Union, though a good part of the members should swallow it with a little reluctancy. We are just going to see how much farther we can push our good fortune to-morrow. M. d'Auerquerque marches with 16 battalions from this army, which, with two sent already, and 22 from the Dutch garrisons and Flanders, are to make themselves masters of the pass at Plassendal and the forts upon the canal between Ostend and Neuport, and afterwards to make the siege of Neuport. By that means Ostend remains blocked. . . . There are only five battalions English gone to this siege, and they are the youngest. Mr G. Murray and the Duke of Argyle are gone already. I believe it will be hard to persuade his Grace to

* MS. letters in the Mar charter-chest from Lord Dalrymple to John Earl of Mar, then Secretary of State for Scotland, afterwards leader of the Insurrection of 1715.

return at present by the first of August. It might be possible, if the Duke of Marlborough would make him M.-G., and let him touch the appointments; but his Grace seems very backward in matter of promotion. We have but three battalions in this whole army after this detachment is made; and yet I do not know if we are like to see the number augmented. I hear my Lord Tullybardine has got something, but I do not know what, nor by what means he is a-coming. My hearty service to Loudoun and your families. If I had more time I should write more particularly. My dear lord, I am entirely yours, DAL."

While serving diligently with his regiment, Lord Dalrymple had now in view, if he could obtain it, the colonelcy of the Royal North British Dragoons or Scots Greys. In September he writes to Lord Mar:—

"ALOST, *Sept.* 9, 1706.

"After a whole age of silence, my dear lord, I had your letter by Captain Scott, which happened to come slow by an accident happened to him; he was taken prisoner coming to the army. You may be sure he needs no other claim but your recommendation to all the little service I can do him. We are now pretty near the end of our campaign. I am so far on my way back from the siege of Dendermonde to the great army that marches to besiege Ath. The condition of the Dutch magazines does not allow the undertaking of anything more considerable, which the goodness and number of our troops might very well pretend to, but these gentlemen had not laid

their account with so many conquests; so we want bomb-shells and grenades; but we may be comforted with what has happened. If the siege of Ath keeps us till the end of September, we shall think of winter quarters then, and go to them, I reckon, about the middle of October, about the time your campaign begins, which I most heartily wish may be prosperous. The Duke of Marlborough is now endeavouring to send you a reinforcement; and I am persuaded he will succeed, since he seems resolved to do everything to satisfy the Duke of Argyle, who has indeed acquired a great deal of honour in this campaign. He seems resolved to gratify him in his pretensions of being major-general, and having the first English regiment. I believe his pretensions to our dragoons * would have been very well received; but he makes none, in favours of your humble servant. The Duke M. seems very much inclined I should have them, if you of the Ministry don't oppose it, whose advice, I believe, he has asked, that everything in Scotland may be done to your mind. Without entering into the detail of arguments, I must own I do expect something more than barely not being opposed from her Majesty's Commissioner and Secretaries. Lord Tullybardine has been hardly pressed upon the Duke by the Earl of Orkney; but his Grace has positively answered he cannot dispose of that regiment to anybody who has not the means to satisfy Colonel Prestoun. . . . When I arrive at the army I shall give you an account of the success of my pretensions. I should be very little in pain about them if the encouragement the Duke has

* The North British Dragoons or Scots Greys.

given them had not put me so much under the observation of the world that I cannot find out any consolation for being defeated unless some more considerable pretenders should arise.

"Pray, dear governour, make haste with your Union, for the success of this campaign leaves no hope of further war. I begin already to turn my thoughts towards taking a cottage from you, of planting trees, and suchlike things; a little burgundy and champagne must now and then renew some faint remembrance of what is past. Everything must pass away, my dear governour; but my being equally yours must remain. My service to the regiment. I give you as much joy of the green ribbon, my dear lord, as if I had begun with it."*

Towards the close of the campaign Lord Dalrymple attained the object of his desire, having had conferred on him the colonelcy of the Scots Greys. Justly proud of his new regiment, which had gained laurels both at Blenheim and Ramilies under the leading of Lord John Hay,† he wrote again to Lord Mar:—

"Camp at Ghihanghici, *November* 1 [1706].

"Governour,—I have got the regiment; the Duke will have Agnew to sell—so James Campbell is to be lieut.-colonel, and Boyd major. I thank you for your letter. I could have done that a fortnight ago, but I was resolved not to write till I knew what

* This and the letters to Lord Mar that follow are from the Mar charter-chest.

† Cannon's Account; Earl Stanhope's Reign of Queen Anne, p. 150.

became of me, which I did not till this morning. His Grace, I believe, will write to your lordship to-night. He told me I had no need of the letters, but I am very well satisfied they did me good. I am very glad it falls out as it does, for I should have been devilishly embarrassed if, after balancing so long, Prestoun had been preferred to me. I could not very well have afforded to quit, and yet 'tis pretty certain I would have served no more; but this is a great deal better. His Grace, now that he has determined himself, does it in the most obliging manner in the world. It is true, indeed, his delays had the kindest air could be to me; but this is incomparably better. I find few people but are of Sancho Panza's opinion in this matter — Un *tien* vaut deux *tu auras*. You must take the proverb in French, for I can't translate it.

"I have sent to Liège for some drink to you. If you can hold out till the Scots fleet arrives, it will part from Rotterdam about three weeks hence. I am sorry for the ill luck you last had, but champagne and burgundy will play the devil with those thin bottles in the summer time. Of one parcel, I lost 113 bottles this year.

"Our army separates on Wednesday next. I wish I may arrive in time enough at the Hague to go over into England with the Duke of Marlborough. I long very much to hear how your affairs have gone, and especially the parts our friends and acquaintance have played. I read your uncertainty in your saying nothing; but all that is clear long ago, as is the success of the treaty [of Union]. May it be as we wish it; and yet, I think, gentlemen, you

have very good reason to be content with the ministry—as well likewise have the millers and the country. My dear lord, God bless you! My service to his Grace of Argyle, the Marquis, and my Lord Admiral.

"I have writ to Loudoun of a man for whom I most earnestly bespeak your protection a little actively. He will show you what I write. The man is Stewart. I need say no more of him; I am sure his Grace of Argyle will join heartily with you, if you can find out anything for him. My dear Governour, farewell. Be as well pleased as I wish you, and you will have reason to be so."

The next winter, in the course of which the debate on the Union took place in the Scottish parliament, Lord Dalrymple was in Scotland; and on the death of his father in January 1707, he took the oaths and his seat in that assembly as Earl of Stair. In the ensuing month it would seem, from a letter preserved in the Marchmont Papers,* that he applied to Government for a British peerage when the Act of Union was passed, mainly on the ground of the services rendered by his father in carrying it through.†

* The address of the letter is awanting, but it was probably addressed to Lord Godolphin.

† From a letter of Lord Stair to Mar, of June 9, 1707, Lord Mar was apparently about to contract a second marriage, after the death of his first wife, who died in April 1707. "I don't condole with you" (Stair writes) "in common form; I take too much interest in what concerns you, not to be heartily sorry for your loss. To be happy and marry twice is too much good fortune for any one man to expect. I need not say much to persuade you I am not glad to see so good a friend change certain tranquillity for so cruel an uncertainty." Lord Mar's second marriage (which was to Lady Frances Pierrepoint) did not take

The application was unsuccessful; but at the first election of Scottish representative peers after the Union he was chosen one of the sixteen.* He took his place accordingly in the first British parliament, which met in October 1707, and joined in one or two debates, having for their subject marine regulations and the security of trading vessels.

I should mention here that, besides his eldest surviving son, the subject of these Annals, the first Earl of Stair was survived by two other sons, the Hon. William Dalrymple of Glennure, an officer in the Foot Guards, afterwards M.P. for the burghs and then for the county of Wigton, and the Hon. George Dalrymple of Dalmahoy, a baron of Exchequer in Scotland; also by two daughters, Lady Elizabeth, who died unmarried, and Lady Margaret, who was married to Hugh, third Earl of Loudoun.†

place till July 1714, so that Stair's advice to his "friend about to marry" had been followed in 1707.

* More than 130 years after the Union, General Sir John Dalrymple, eighth Earl of Stair, was made a British peer, being in 1841 created Baron Oxenfoord in the peerage of the United Kingdom.

† Douglas's Peerage, edited by Wood.

CHAPTER II.

Lord Stair again with the army under Marlborough—Bearer of the despatch announcing the victory of Oudenarde—Letters to Lord Mar—Stair sent in a diplomatic capacity to Warsaw—Is present at the siege of Lille—His domestic affairs—With the change of ministry the war draws to a close—Lord Stair sent on a mission for supplies to the Earl of Oxford—Preliminaries of peace concluded—Stair forced to sell out, and deprived of his command.

In the spring of 1708 the Earl of Stair was again on the Continent with Marlborough and the allied army. After the battle of Oudenarde, where he commanded a brigade, he was the officer selected to carry the Duke's despatch to Lord Godolphin announcing the victory, in which this passage occurs: "The particulars you will hear from Lord Stair, who will give you this; you know his pretensions and the friendship I have for him; and I will own to you, that I hope her Majesty may have by this message an excuse for others, if she is pleased to distinguish him at this time. I must now acknowledge the goodness of God in the success He was pleased to give us; for I believe Lord Stair will tell you they were in as strong a post as is possible to be found." *

In a letter to Lord Mar from Windsor, upon the

* Coxe's Life of Marlborough, ii. 480.

occasion of carrying the Duke's despatch, Lord Stair gives a summary of the battle :—

"WINDSOR, *July* 5, 1708.

"MY DEAR LORD,—I am just arrived here with the agreeable news of the Duke of Marlborough's beating the French near Oudenarde on Wednesday last. We marched five leagues past the Scheldt, and beat them all in one day. The action began to be warm about six, and lasted till night. It was chiefly an affair of foot. The French infantry, one may reckon, is entirely ruined. We had the day after the battle about 7000 prisoners, 13 or 17 general officers, above 70 colours and standards. The remains of their army are retired under Ghent; 'tis probable they may have a good deal of difficulty to get home from thence. The loss on our side is very inconsiderable. You may expect by the post a more circumstantial account. . . . I give you a great many thanks, my dear lord, for your concern about me in the election.* I cannot blame my friends; they have done as people generally do in a storm—flung the

* This refers to a letter of June 20, 1708, from the Earl of Mar to Lord Stair (a copy of which is preserved), in which an account is given at great length of the recent general election of Scottish peers, and the non-election of the Earl of Stair. The rival lists of the Government and the *Squadrone volante* appear to have given occasion to much intrigue and jockeying; Lord Mar observing with reference to this—"You see Newmarket breeding serves for something."—Mar MS. Letters.

A casual reference to some Jacobite prisoners in Edinburgh is the only notice in the Mar correspondence of the well-planned but ill-executed diversion by Louis XIV., in the shape of an expedition to Scotland in 1708 in favour of the Pretender. Had this expedition landed, and the Jacobites been ready, it might have been a more serious affair than the subsequent rising of 1715, and, by the withdrawal of British troops, would have materially disconcerted Marlborough's campaigns on the Continent.

lumber first overboard. Adieu, my dear lord; my service to our friends. The packet goes this minute, and waits only for me, so this letter must serve all my friends. I write at Mr Secretary Boyle's."

The battle of Oudenarde was followed by the great military operation of the siege and taking of Lille, at which Stair assisted with his regiment :

The Earl of Stair to John Earl of Mar.

"Camp at Rousselaer, *Oct.* 15, 1708.

"My dear Lord,—Our affairs have been in so uncertain or in so melancholy a way of late, that I have not had spirit enough to write to you. I profit of a little good humour we have from the hopes of at last making a good end of the campaign, to entertain your lordship on a Sunday morning. I shall not trouble you with the beginning of our siege of Lille, and how we came to be so much disappointed in our calculation of the time and necessaries for taking it, nor of the great difficulties we have had in bringing so many and so great convoys of ammunition, and of furnishing bread to so great an army in an enemy's country, cut off from our own—difficulties great enough to make some people more than once think of quitting the enterprise. If you will join to these circumstances the great numbers of men we lost, and the little progress we made at the siege, you will be pretty near able to imagine the uneasiness of our situation here, being barred out from our own country. . . . The circumstances of our affairs seem to give us a pretty good prospect of success, but show us the end of the campaign at such a dis-

tance, that I cannot very well tell whether I see it or no. I will tell you how we stand.

"Before Lille we have batteries upon the counterscarp that beat a new breach, behind which the French won't have time to play all the tricks they had played behind that we wisely made seven or eight weeks ago. Our engineers tell us, against the 19th we shall have the town. If they don't keep their word, I am for sending them to our friend the Emperor of Morocco for carrying on his siege of Ceuta. As to ammunition, we have enough for the town. . . . When we have once made a sufficient stock of ammunition, the citadel cannot give us great trouble; the garrison cannot be considerable, the ammunition of its magazine is now wasting in defence of the town. . . . For the matter of forage, the French must have subsisted since the battle of Oudenarde behind the canal and upon the Scheldt. Forage of necessity must be very scarce in their camp already. Their cavalry is now in very ill condition. We have now forage in this camp for a month, if we have a mind to stay so long; after that, we have convenient subsistence for two months at Armentiers along the Lys, where there has not been one truss made this war—a most excellent country, and all the enemy's. The town of Lille will furnish us a thousand things we want now, such as wine, brandy, salt, &c. So your lordship may imagine which army is like to suffer most before Christmas—we, or the French without clothes, money, or forage. I desire you may not be scandalised at the word 'Christmas' you may meet with somewhere above. I do by no means expect the honour of seeing your lordship before that time.

Is not the war a good trade? . . . So much for our situation. If it should happen to be worse than I think it, I fancy affairs with you would have a very muddy look. I suppose the Queen delays the meeting of the Parliament in hopes of having some good news to tell them at their coming together. I believe there are great men that equally dread having them too good or too bad; they would have them so good as to be free from the apprehension of ruin—so bad as my lord Marlborough may need their protection, and the queen may not be able to think of standing on her own legs. . . .

"For my own affair, it is just upon the foot I desire it; the queen told me she should do it, if it was in her power.* I shall be so very sorry to see the queen's authority suffer so great a diminution, that I shall make but very little reflection on my own particular loss; but I hope things are not so bad as to give just ground for such an apprehension. In the meantime my party is taken; if my affair won't do by the queen, I will make my court no other way; so there I have it without moving any more in it. For the governour's [Lord Mar's] pretensions, I wish him as well as he does myself; I don't think they hurt mine at all. That is a very natural reward for the sovereign to give to a faithful servant, especially when they have such just claims as the governour, both upon the account of his family and his own merit. I hope the Union has not barred all the people of quality of our country from that advantage, as I take it there is no man who sincerely wishes the Union

* Lord Stair was still endeavouring to obtain a British peerage, of which Lord Mar appears also to have been desirous.

complete and lasting will be for having that principle attacked. I heartily wish there could be an expedient found to free us from the eternal inconveniences which must attend an election; but I am very apprehensive, put that matter into whatever shape you can think of, there will be such difficulties as will be very hard to overcome. But time and chance often make things easy that seem to be above the wisdom of the best contriver. In the meantime, you may reckon I won't pretend so much as to touch so delicate a string. . . .

"I hope Sir David * is with you. I wrote to him, and he did not seem averse to coming [to London], though his family was of a very different opinion. If it be possible to get a little good wine over for you, you shall have it. I have done with your epistle as you desired; it cannot rise in judgment aaginst you. . . .

"*Tuesday* 17*th*.—We have done nothing at the siege since Saturday, so our batteries will not get play for the new breach for a day or two. This retardment comes ill at this time of the year. We still keep our communication with Ostend. Saltoun swears he will burn the letter if I don't give you his most humble service. He is in great want of some of the good claret we drank last winter. By this you may perceive we are in want of drink."

"Camp at Rousselaer, *Oct.* 24, 1708.

"At last we are masters of this troublesome town

* Sir David Dalrymple of Hailes, Lord Advocate of Scotland from 1708 till 1720. He was the youngest son of the first Viscount Stair, and uncle of the second Earl.

of Lille. I shall not trouble you with the terms of the capitulation. As soon as ever the siege ended it began to rain. I hope it will grow fair again by the time we begin to the citadel, which cannot make a vigorous resistance, considering how much the troops have been fatigued and how many things they want. The danger of leaving the French in possession of Ghent and Bruges, with Oudenarde between those places and Tournay, is so very great that I believe we shall hardly think of separating our army, but endeavour to make them all subsist cantoned in this country—at least, so very long till it be impossible for the French to undertake anything. This is by much the oddest situation ever was in war, but I hope we shall get out of it at the rate of a good peace. There is no manner of doubt the French will bring all the troops they have in the world hither this winter or in the spring very early, in hopes to be able to take Oudenarde before we can get into the field. There is one thing to be done which I dare swear would procure us *carte blanche* immediately, and that is if the States would propose to the Queen to make an augmentation in this country next year of 20,000 men; the very proposal would break the heart of the French. They know the troops are ready, and they are persuaded we can find the money when we have a mind to it. I have reason to believe my lord Marlborough will propose the thing to the States; I wish they may give in to it. . . ."

Receiving in the course of the winter his promo-

tion to be major-general, Lord Stair took part in the battle of Malplaquet in the following year.

Augustus of Poland, who had acted as a volunteer with Marlborough at the siege of Lille, having now recovered the throne of that kingdom, Lord Stair was sent in the winter of 1709 as envoy-extraordinary to the court of Poland, for the purpose of inducing the king to exert himself in the cause of the Alliance and augment his forces, in order that the war with France might be carried on with success, and the enemy made to hearken with more sincerity to the terms of an honourable and lasting peace.* He continued for some months in his diplomatic capacity at Warsaw corresponding with the British Ministers at Vienna and the Hague, with the view of furthering the object of his mission and also of protecting the interests of Poland on the northern frontiers of Germany. Towards the close of his stay at Warsaw he received from the Secretary of State the following letter:† "I am to thank your lordship for the favour of yours of the 23d, which I have laid before her Majesty, who approves of your countenancing and protecting those of the Protestant religion in Poland, and would have you assist and support them in their privileges, and do them what service lies in your power as often as you have a proper occasion for it. . . ."

The conferences for a treaty of peace which com-

* Mr Secretary Boyle to the Earl of Stair, Dec. 27, 1709—Stair MS. Papers, vol. i.

† Mr Secretary Boyle to the Earl of Stair, 31st March 1710—Stair Papers, vol. i.

menced at Gertruydenberg in 1709 having been renewed the next spring, Viscount Townshend, British minister at the Hague, wrote in April to Lord Stair at Warsaw: *—

"The 10th inst., the two Dutch deputies returned hither from Gertruydenberg, and the next day reported to the Pensionary and the Britannic and Imperial ministers that M. d'Uxelles and the Abbé Polignac insisted upon their first unreasonable and impracticable proposals for a *partage* with a more imperious and peremptory air than they had shown at any former conferences, and demanded from the Queen, the Emperor, and the States-General that the rest of the allies should acquiesce in the execution of the preliminaries without any further demands, or be compelled to it by force of arms. This behaviour of France has convinced everybody here that they renewed the negotiations with no other design but to amuse and to excite jealousies among the allies, with hopes to gain some of them to their side. The French ministers continue at Gertruydenberg, having despatched another courier to Paris with an account of this *pourparler*. Prince Eugene arrived here on Saturday morning, and his Highness and the Duke of Marlborough honoured me with their company at dinner on Sunday; and having yesterday dined at Count Zinzendorff's [the Imperial minister], the two generals left this place together at four in the afternoon, and design to be at Tournay on Thursday the 17th. The Duke of Marlborough, before his departure, gave me a

* The Hague, April 15, 1710—Stair Papers, vol. i.

copy of the project for a defensive alliance between her Majesty and the King of Poland, with directions to communicate it to the Pensionary, and to transmit a copy of it to Mr Secretary Boyle."

Being desirous of returning to his duty in the army, Stair was informed from Whitehall * that the Queen did not intend his going to Warsaw should divert him from serving in Flanders, and was satisfied that he should stay there no longer than was consistent with his post in the army. Leave was sent him accordingly to return from Warsaw, satisfaction being also expressed with the manner in which he had conducted himself at the court of King Augustus. He was about the same time made a knight of St Andrew, and promoted to the rank of lieutenant-general.

In the campaign of 1710, Lord Stair was present at the siege of Douay, which he assisted in covering with his regiment of Scots Greys. The taking of Douay was soon followed by the possession of Bethune, Aire, and St Venant, at which juncture so unprotected were the French frontiers, and to so low a condition were the resources of Louis XIV. reduced, that, if the authority of Voltaire is to be taken, Lord Stair proposed sending flying squadrons of cavalry up to the gates of Paris.†

An unhappy fault in Lord Stair's habits of living, and of which he felt the consequences during his

* April 4, 1710—Stair Papers, vol. i.; Cannon's Account of the Scots Greys.

† Siècle de Louis XIV., c. 21. Voltaire and Lord Stair were at a later period on terms of personal acquaintance and correspondence.

whole life, was a regardlessness of expense in whatever business or amusement he engaged in. Gaming in various ways he had been led into in the camp life abroad; and this had already impaired his private fortune, which was derived solely from the income of his estates of Newliston in West Lothian, and of Castle Kennedy and other lands in Wigtonshire. The pounds *Scots* in which rents in Scotland were paid at that time went but a short way when converted into pounds *sterling* in England, where living was so much more expensive. In Scottish politics he brought to bear an extensive hereditary and territorial influence. In Galloway,* and particularly in Wigtonshire, his influence and interest were for many years appealed to and vigorously exerted, not always on the side of the Government.

Some hints as to these various matters are conveyed in the following letter from his uncle, Sir Hew Dalrymple, president of the Court of Session :—

"*August* 9, 1710.

"My lord Advocate [Sir David Dalrymple] was at North Berwick with me when I had the honour to receive your lordship's of the 3d August, and we read your letter with much pleasure, both because your lordship lets us know that your health is better, and that you are laying down so good rules for your private affairs, and towards the payment of your debt. We had written a few posts before jointly, and had undertaken to advance the whole

* The district of Galloway, in the south of Scotland, includes the county of Wigton and the stewartry or county of Kirkcudbright.

principal sum due to Col. Charteris* at Martinmas next. . . . Your lordship may be fully assured that I will at all times support your credit with the last farthing I can raise upon mine, being satisfied that the raising of money is for your service; and I am fully satisfied that after what has passed you will never be in hazard of relapsing to gaming, nor shall I ever further mention what inconveniences have happened formerly that way. You will find no difficulty (if it please God to preserve you) to clear yourself in a short while; and there are several purchases that are very fit to be made for your family, which need not be delayed till your debt be paid. When once you are in that method, you shall neither want money nor credit. I apprehend you cannot well reckon upon £1000 out of your own estate, because my lady [the dowager-countess, Lord Stair's mother] is in advance, and I have reason to believe that she intends to reimburse herself at Martinmas. . . .

"I have been indisposed a great part of this last summer, and am this far on my way to the Bath, by advice of physicians. My daughters, Greenock and Betty, and my son and his wife, are of the party, who all give their most humble duty to your lordship. Poor Anny is lying-in of a child who lived but two hours.† I shall not be in a condition to do your lordship the service, in case of a new parliament,

* Col. Francis Charteris, immortalised by Pope and Hogarth, was rich and a great money-lender.

† Sir Hew Dalrymple's eldest daughter, Margaret, was married to Sir John Shaw of Greenock. His second daughter, Anne, was married to Sir James Steuart of Goodtrees. Of her marriage (in 1701) an amusing account is given in the Coltness Papers, p. 375.

which might have been expected if I had been in Scotland. The Advocate has undertaken to bestir himself, and particularly to try what is to be done with the Viscount of Kenmuir about his burgh in Galloway. The Advocate and I wrote a letter to my Lord Galloway, proposing to his lordship, as a neighbourly and friendly thing, that there should be no interfering between his lordship and you in your absence, but that the representation of both the shire and burgh should be adjusted by common consent. I have no great expectation that he will comply more than last year, yet I believe the Earl of Eglinton will not be so opposite as he then was. For the shire [of Wigton] you have nobody to propose. Col. Agnew will never be acceptable to the shire, nor do I think it for your lordship's honour to advance him till the unneighbourly prerogative he pretends to be adjusted, to which he adheres very firmly."

The change of counsels which took place in England in the end of the year 1710, and the dismissal of Godolphin and the Whig ministry, with whom Marlborough had so long acted, very soon occasioned a marked difference in the mode of conducting the warlike operations on the Continent. The Duke of Marlborough continued to command the troops, but with the Earl of Oxford Lord-treasurer and chancellor of the Exchequer, while the secret negotiations for a separate peace with France were in active progress, the source from which the necessary sinews of war were supplied to the army abroad began to be

dried up. John Bull was getting tired of his glorious but expensive lawsuit, and was not disinclined to put a stop to the war.

The siege of Bouchain was the only event of consequence in the campaign of 1711. When the siege was well advanced, Lord Stair was sent by the Duke on a secret mission to Lord Oxford, to obtain money from Government in order to prosecute the investment of Le Quesnoi and form the requisite magazines. The request for supplies was pressed upon the new chancellor of the Exchequer by Stair with an anxiety which proved unavailing, although sanguine hopes were held out by Marlborough, in his letters to Oxford, that the capture of this last stronghold of the enemy might be the means of putting a satisfactory end to the war.* In answer to the Duke's appeal, Oxford returned a despatch, waiving in fact the subject, and referring to his verbal conversation with Stair.

Of this mission Lord Stair himself gives the following account, in a letter to the Earl of Marchmont twenty-five years after:† "I went to London, and delivered my Lord Marlborough's letter to Lord Oxford. After many delays, I had at last a very free conference with his lordship, in which he spoke with great freedom and plainness to me. I thought, by all my Lord said, our conversation was to have ended in establishing a very good understanding between my Lord-treasurer and the Duke of Marlborough; but his lordship in the end thought fit to

* Aug. 20, 1711—Coxe's Marlborough.
† Dec. 10, 1736—Marchmont Papers, ii. 75.

say that he must defer declaring his final resolution upon the whole matter till our next conversation, which he faithfully promised me should happen in a very few days. . . . From day to day I put Lord Oxford in mind of finishing our conversation, but to no purpose. In the interval, Mr Prior had sent back from France what they took to be a *carte blanche* for settling all the differences in Europe; and in the end I was allowed to go back to the siege of Bouchain with a bamboozling letter from Lord Oxford to the Duke of Marlborough."

It cannot excite surprise that Stair's mission upon this occasion came to no result, when the fact is known that the preliminaries of a peace with France were signed on the 27th September 1711, at the very time he was in London.* Before the year closed, Marlborough was dismissed from his employments, and soon after took up his residence at Antwerp, where he continued till the death of Queen Anne. The Duke of Ormond was placed at the head of the army. The general officers of Whig principles and antecedents, who had been trained under the Duke of Marlborough, including the Duke of Argyle, the Earl of Stair, and General Cadogan, were deprived of their commands; successors being appointed to them, and prices named at which they were to sell out.† The colonelcy of Stair's regiment of Greys

* The suspension of arms between France and Spain and England, by which the war on the part of England was virtually closed, was signed at Paris in August 1712; and the Treaty of Utrecht was finally concluded in April 1713.

† Draught of a Memorial by Lord Stair to the Duke of Marlborough —Hardwicke Papers, ii. 522; Cannon's Account of the Scots Greys.

was made over at a fixed price to Colyear, Earl of Portmore, a soldier of approved reputation, but whose merit on the present occasion chiefly consisted in his being favourable to the views of the Tory ministry. In the course of these proceedings Stair returned to England, revisiting his relatives and estates in Scotland, and residing when in London at a house rented by him in Arlington Street.

CHAPTER III.

Lord Stair marries the Viscountess Primrose—Letter of Lord Finch—Change of circumstances upon the death of Queen Anne—Letters of the Dowager-Countess of Stair to her son—Appointment of Stair to the British Embassy at Paris.

It was probably in the summer of 1714, after the close of his military career with Marlborough, that Lord Stair was married in Edinburgh to Lady Eleanor Campbell, daughter of the Earl of Loudoun, and widow of the first Viscount Primrose, who died in 1706.* The Countess of Stair was not happy in her first marriage, and some very wonderful stories are told of her ladyship in Chambers's 'Traditions of Edinburgh.' She had a son by her first husband, and also a daughter, the Honourable Margaret Primrose, who came with her mother to live as an inmate of Lord Stair's family. Lady Stair appears to have been subject to hysterical ailments,† very probably brought on by the trying passages of her earlier life. During her married life with Lord Stair, she conducted herself in a manner entirely worthy of her position, and exercised by gentle methods a favourable influence upon Stair,

* In the postscript of a letter from his relative P. Macdouall of Frew to the Earl of Stair, 4th August 1714, the writer adds: "My spouse joins me in our humble duty and wishes to the *gloving* my Lady Stair."—Stair Papers, vol. i.

† Lady Mary Wortley Montague's Letters.

particularly in restraining within the bounds of temperance his convivial indulgence in wine. In the letters addressed to him by his most intimate correspondents, Lady Stair and Miss or (as she was more frequently called) Mrs * Primrose are always mentioned in terms of respectful and cordial regard.

Lord Stair's marriage must have taken place prior to the date of the following letter from his bachelor friend Lord Finch, afterwards Earl of Nottingham and Winchelsea :—

"BURLEY, *July* 24, 1714.

"MY DEAR LORD,—I was in hopes of having the happiness before now of seeing you here in your way to Scotland, your designed time of coming out of town being already past. I only speak this out of the great desire I have to see you here, and the impatience I am in till I have that pleasure. Think not, my dear lord, it comes as a reproach to you for altering your resolution of coming out of town, or that I envy you the happiness of being there (I love you too much to repine at any pleasure you enjoy), or that I blame you for staying in a thin town to have the command of the fair ones, who, whatever they are at other times, are now good-natured by necessity. . . . I daresay that I never should have been less my own master than if I had been entirely the disposer of myself and governor of my

* In the Stair Papers this contraction is uniformly used instead of the word "Mistress" fully written. About and after the year 1715 the appellation "Miss" begins to come into use instead of "Mrs," for an unmarried woman, by young men of fashion at Court. Old-fashioned people, as Lord Stair's uncles and the first Duke of Montrose, continue in the case of this lady the designation of "Mrs Primrose."

own actions as to the point of leaving the dear town of London. There is here no Thames, no Greenwich, no Park, no small beer flung in one's face for having taken the innocent pleasure of peeping in at a window. The fair ones that imagine that in the country one enjoys an indolent dull quiet, and a freedom from cares and troubles, mistake it quite. One is in nothing free, but from pleasure. . . . To complete one's happiness, too, I don't question but one is registered among the dead of the last age, and one's unhappy name is only remembered and kept in the list of lovers, as it is one, and serves to increase the number. I hope, my dear lord, your memory will not be like theirs (for they are many that give me pain), but that you will remember to call upon me here. I was to wait upon Lady Stair before I left London, who I hope will come with you, though I had not the good fortune to see her, that I might have begged that favour from my Lady Nottingham as well as myself. Whenever you do come, it will always be the greatest pleasure in the world to your most faithful, &c., FINCH." *

While Lord and Lady Stair were living in London, probably in Arlington Street, the schism between Oxford and Bolingbroke, which had been gradually widening, ended in a break-up of the ministry. Lord

* Stair Papers, vol. i. Lord Finch's father (Swift's "Orator Disma of Nottinghamshire") became President of the Council after the accession of George I. It is difficult to recognise in the writer of this letter the bold defender of Sir Richard Steele in the Parliament of 1714, and the serviceable cabinet minister of the reign of George II. Lord Finch's sister, Lady Betty, was married in 1738 to the Hon. William Murray, afterwards Earl of Mansfield.

Oxford being removed from the Treasury, Bolingbroke received the royal command to form a new Administration; and there can now be little doubt that it would have been one of a Jacobite character. This peril was averted by the death of the Queen, who had long been ailing, and by the prompt measures adopted by the Whig peers and Hanover Tories (as they were called) in favour of the succession of the Elector of Hanover.

The following highly characteristic epistles to Lord Stair from his mother the dowager-countess, residing in Edinburgh, refer to the event of the Queen's decease, and gradually slide into her son's private affairs and election politics. The old lady's care is divided in nearly equal proportions between the concerns of the present and of the future world.

*The Dowager-Countess of Stair to the Earl of Stair.**

"EDINBURGH, *August* 12, 1714.

"JOHN,—I wrote to you since this surprising show of Providence happened [viz., the death of Queen Anne], which is certainly the ground of high praise to God. I wish the nations may live under the due impression of the greatness of their deliverance. I then wrote to you what was my opinion as to anything you had to expect for yourself; and that you would consider with your friends who were coming to you. The president [Sir Hew Dalrymple] after that altered his resolution, and was to go straight to the Bath; but this morning I had a line from him from Berwick, that Providence had so ordered it that he was obliged to go to Bath by London. And he

* Stair Papers, vol. i.

had before wrote me to desire me to write to you concerning Doctor Hamilton, who is a pretty young gentleman and your relation, and he will tell you himself, when he comes, what the matter is. . . . I fear ye get but a bad market for your black cattle; but if all other things be well, there will be the less matter of that. I have not yet heard of their being sold, but by what I heard there was but small profit by what was offered. The elections for the parliament is the only thing that gives me hope of seeing you and your friends shortly. Give my service to your lady, the Earl of Loudoun, and your sister;* and I pray God ye may all of you remember the providence of God towards you.—My dear son, Adieu."

The Same to the Same.

"EDINBURGH, *August* 19, 1714.

"JOHN,—The last great show of Providence has been so conspicuous, that it has put the great part of strangers to acknowledge that the scales of the earth belong unto the Lord, and that He governs the nations; (make no question of your acting under this impression). Therefore it is proper now to put in practice what you are convinced to be your duty. And there is only one thing I must put you in mind of as an absolutely necessary duty, that you ratify your baptismal covenant by partaking of the sacrament of the Lord's Supper, as being the express command of that God which rules all nations. For anything else, your friends now with you are much more capable

* Lord Stair's younger sister, Lady Margaret Dalrymple, Countess of Loudoun.

to give you advice than I am. And I have also spoke to the bearer of your things, and shall pray for your being under the influence of the Spirit.—My dear son, Adieu." *

"EDINBURGH, *August* 24, 1714.

"JOHN,—Yesterday I had yours of the 17th and the 19th, and am very glad that the president [Sir Hew Dalrymple] is safely arrived. I shall take care of your packet for Galloway. I am expecting an express from Mr Andrew Ross to-morrow in relation to your black cattle, for there is some fears that we will be obliged to send them up [to England] upon our own expense. If he did not sell them on Saturday last, he was to send me an express for directions what to do next, for it will be necessity and not choice if they be sent up to be sold in England. . . . You are now so well provided with friends that I need say nothing to you, but desire you to write to me what is resolved on before the president leave you. I see Mr Aubery has been with you; and if you have any design of a manufactory, it will be fit to employ him, because he has some knowledge of the wools and the country, and is a good sober man. My service to your lady.—My dear son, Adieu."

"EDINBURGH, *September* 18, 1714.

"DEAR JOHN,— . . . I have seen a letter from James Dalrymple, which will give you an account how things are, and (which I am really surprised at)

* The words "John" and "My dear son, Adieu" are autograph of the countess, who uses in the main portion of the letters the hand of an amanuensis, and never signs her name.

that the Earl of Galloway remains so obstinate. Certainly Vans is the man we must set up for the boroughs, but I don't see a man we can set up for the shire, seeing your brother William is not qualified, and I do not know if it were not better to give the compliment to Brigadier Stewart yourself, without respect to his brother; but when you have the return of your letters, you will know better what to do; but this is my opinion at present, so far as I can see in the affair.* Your three dogs arrived here safe last week; and Col. Campbell told me they were to be sent to Elphinstone, which was done accordingly. . . . Give my service to your lady and her daughter; the reason I did not write to her was because I was writing to you, and thought that that might save some labour of writing to her, so you may tell her so when you see her.—My dear son, Adieu."

At this critical juncture of affairs at home and abroad, when the new dynasty had not yet steadied itself upon the throne, and the views of the French king (notwithstanding the recent treaty of Utrecht) were extremely uncertain as regarded the pretensions of the exiled family, it was of the utmost consequence to the British government to have at Paris a representative equal to the occasion, and on whom they could thoroughly rely. Such a representative was found in the Earl of Stair, who, within two months after the accession of George I., received the appoint-

* Brigadier the Hon. John Stewart, brother of Lord Galloway, was the member returned for Wigtonshire at the ensuing general election, while Colonel Vans of Barnbarroch, referred to in Lady Stair's letter, was returned for the Wigton burghs.

ment of British envoy to the French court in the room of Prior, without at first being invested with the formal rank of ambassador. To this appointment the following letter of the dowager-countess refers:—

"EDINBURGH, *October* 26, 1714.

"DEAR JOHN,—This day I wrote to Sir David [Dalrymple] to speak to you of your affairs here, because I fear ye forget them when you have greater things in hand. But since writing to him I have a letter from Mr Andrew Ross, in which he writes your lady has ordered him to send your wine and some other things to Glasgow, and your plate by land. I am sorry that ye have it not with you, because it might have saved some expense. But if it can do ye any service to be sent after you, it should be done with all the expedition it can be; or if that cannot be, write what way it shall be disposed of. And I fear whatever furniture is at Castle Kennedy will be spoiled, therefore it were better to sell it. I saw Sir David's letter to the President, which gives an account of your public affairs; and I think that either Lord Loudoun or Col. Cathcart* will be very proper for having the charge of your affairs [in London] during your absence; and if the Colonel succeed in his project, it's like he may be a more constant resident there than is proper for my Lord Loudoun; but both of them are extremely well qualified. And I shall be glad to know what your final resolution is as to both your public and private affairs, which I shall take all the care of I can, and recommend you to the

* Colonel the Hon. Charles Cathcart, afterwards eighth Lord Cathcart, was cousin of Lord Stair, his mother being a sister of the first Earl.

conduct of the good providence of God. Give my service to your lady.—My dear son, Adieu."

While Lord Stair's arrangements were in progress for entering on his important charge, the Royal Burghs of Scotland presented to him the following address in relation to their trade with France :—

"EDINBURGH, *Nov.* 30, 1714.

"MY LORD,—The committee of the Royal Burghs being informed that it has pleased his Majesty to name your lordship Envoy to the court of France, we thought it our duty to congratulate your lordship on this honourable employment.

"We will not, at this time, give your lordship the trouble of setting forth the disadvantages our trade with France lies under, seeing (as we are told) the same is not to fall under your lordship's consideration: only give us leave to entreat your lordship will be pleased to advise us in what manner we should apply for redress of our grievances with respect to that part of our trade, which will be a very great kindness done to the nation in general."

Signed in name and by appointment of the Royal Burghs by George Warrender of Lochend,* Lord Provost of Edinburgh, their Preses.

* Mr Warrender was returned member for Edinburgh to the ensuing parliament.

CHAPTER IV.

Lord Stair arrives in Paris, and commences his duties as British ambassador—The leading objects of his mission—His firm tone in negotiating—Is disliked by Louis and his ministers, and takes the part of conciliating the Duke of Orleans—Letters of Lord Halifax and others—John Law of Lauriston—Stair remonstrates against the attack on Majorca by the Spanish and French fleets, in violation of the Treaty of Utrecht—Letter of Secretary Stanhope—Wanted, a cook for the Spanish ambassador.

Leaving Lady Stair and her daughter in Scotland, with the view of their afterwards joining him in Paris, Lord Stair, in January 1715, set out for the Court of France. He arrived on the 23d, and found awaiting him a despatch from the Secretary of State, General Stanhope, enclosing two warrants, addressed to himself and the former ambassador, Matthew Prior. The first of these required Lord Stair to demand of Prior all the original instructions, orders, and letters received by him from any minister of the late Queen, or from any foreign prince or minister, and copies of all letters written by him relating to the negotiations in which he had been concerned since his going to France in 1711.* Prior made some difficulty in pro-

* Stair Papers, vol. i. Lord Stair kept a journal at Paris during the year 1715 and three months of 1716, which, as it is printed in the Hardwicke State Papers (London, 1778, 2 vols. 4to), will be here only occasionally referred to. One of the first entries in this journal relates to

ducing his letter-books, but Stair would listen to no objections, and ultimately made a packet from them for transmission to England, where they were used in the impeachment process against the Earl of Oxford.

The leading object of Lord Stair's mission was to maintain upon the Continent the interest of the now reigning family and the Protestant succession in Britain; and in view of this, to counteract in every possible way the intrigues and efforts of the Jacobites in favour of the exiled Stuarts. Another object, and which was to be immediately pressed, was the enforcing of the *bona fide* execution of that article of the treaty of Utrecht by which Louis XIV. agreed to demolish the harbour of Dunkirk, which, with its dykes and fortifications, was regarded as a standing menace to England in the Channel. Louis had delayed the work of demolition, and, without regard to the good faith of the treaty, had commenced forming a capacious haven and canal at the port of Mardyck, less than a league south along the coast from Dunkirk.* It required a degree of firmness and resolution beyond what the French had been accustomed to in British diplomatists to set this matter upon its proper foot, without actually breaking with the old king.

That Louis XIV., so long used to having his own way in negotiations, should at once yield upon this point to the representations of a new envoy, whom

Prior's papers and letter-books, which "he had a good deal of pain to let go."

* Treaty of Utrecht, 1713, Art. 9; Stair's Journal; Moll's Map of the Netherlands, 1708.

the French courtiers already accused of arrogance, was hardly to be expected. It was supposed however in England that the Duke of Orleans, prospective regent of France, would be more amenable to views consistent with the interests of Great Britain; and that, looking to the rival pretensions of his cousin, Philip of Spain, to the regency, and perhaps also to his relationship with George I., his position in regard to England would be different from that of Louis.* To form and cement a friendship therefore with Orleans, and wean him, if possible, from the influence of the counsellors of Louis—the traditional enemies of England and its Protestant sovereign—was another main object of Stair's embassy.

Such was the effect of the good set terms in which Lord Stair's memorials were couched that the formation of the canal at Mardyck was discontinued, and arrangements made for the demolition of the works and harbour at Dunkirk, as provided by the treaty. The two following extracts from General Stanhope's despatches to Stair in February and March show the appreciation at home of his conduct in regard to this and other matters :—

"*February* 17, 1715.

"I am to acknowledge receipt of your lordship's letters, which have been laid before the king. I am commanded by his Majesty to express his approbation of everything you have done, either

* In June 1715 we find George I. sending, through Lord Stair (with a complimentary letter in French), a ring to the Dowager-Duchess of Orleans, which had been bequeathed by the Electress Sophia to that princess who was her niece.—Stair Papers, vol. ii.

in relation to your behaviour at that court or in obedience to the commands you received concerning Mr Prior's papers. We shall expect their answer to your memorial touching the new canal.* As to the [Protestant] galley-slaves, charity and humanity engage the king to wish they might be released, and his Majesty will be extremely pleased if any offices of your lordship can procure them ease; but it is not apprehended here that the king is under the least obligation to depart from what hath been yielded in the treaty of peace on account of such an indulgence. . . . The king hath ordered Mr Prior's demands at the Treasury to be forthwith satisfied."

"*March* 31, 1715.

"Your lordship's letter of the 3d of April, N.S.,† was yesterday laid before his Majesty, who is very well pleased to observe that M. de Torcy gives you hopes that his Majesty shall have satisfaction.

* Although the making of the canal at Mardyck was discontinued, there was great disinclination on the part of Louis and his minister De Torcy, to undo what had been already done. Stair proposed an expedient as to this, which was ultimately adopted by the Government of the Regent Orleans—viz., to alter the new canal and sluices in such a way as that only trading vessels of small burden could enter.—Earl of Stair to Secretary Stanhope, March 27 and May 15, 1715; Stair Papers, vol. iii. B; Voltaire, Siècle de Louis XIV. Voltaire, although he doubts it, has brought no authority to discredit the anecdote related by the President Henault in his Abregé Chronologique as to Louis thus addressing Stair, when on one occasion he had spoken to the monarch with more vehemence than reserve: "Monsieur l'Ambassadeur, j'ai toujours été maitre chez moi, quelquefois chez les autres; ne m'en faites pas souvenir."

† In English letters of this period, the *old style* of the calendar is usually observed in dates; in foreign letters, the *new style*, which throws the dates eleven days back.

Your lordship was very much in the right to avoid entering into any detail concerning the expedients they intimate; for his Majesty thinks it will be soon enough to reply to any insufficient overtures when they shall be made in form. In the meantime your lordship will, in all the conversations you shall have with the minister on the subject of this canal, keep up to the several memorials you have given, which his Majesty does entirely approve. Your lordship will have heard before this reach you that my Lord Bolingbroke hath withdrawn himself into France to avoid justice. He lay at Calais, at the Governor's house; and I must recommend to your lordship to observe what his behaviour will be in France, as likewise what kind of countenance or reception he shall find there from the court." *

Upon Lord Stair's first arrival in Paris, he put himself in communication with the celebrated John Law of Lauriston, with whom his relations afterwards became of so hostile a character. At this time they were on good terms; and while Law was trying his ground in Paris as a financier and projector, Stair was recommending him to the British Ministry for employment in England, in connection with finance and the public debt. The French Exchequer, however, presenting a more promising field for Mr Law's projects, and, from its paralysed and low condition, requiring more aid than the English, that enterprising individual ultimately decided upon remaining in France. Lord Stair had written in Law's favour to the Earl of Halifax, First Commissioner of the

* Stair Papers, vol. ii.

Treasury, and the following letter from Lord Halifax refers to the subject of Mr Law, as well as to other particulars :—

"London, *February* 14, 1715.*

"My Lord,—I have received the honour of your lordship's letter of the 12th, and think it now safe to discover the great secret of the commission I gave your lordship. The five guineas were designed to pay for fifteen yards of point edging, as broad as your finger. Whether the price be fairly calculated I know not, but a fair lady made it, who had a mind the choice of it should be left to your lordship; and I was resolved this should not be disclosed to your lordship while your curiosity could be of any consequence; and if, upon your lordship coming over to Parliament, you make the discovery upon any pinner ends, you may receive the compliments that will be due for your care and skill in choosing.

"I had the honour to know Mr Law a little at the Hague, and have by me some papers of his sent to Lord Godolphin out of Scotland, by which I have a great esteem for his abilities, and am extreme fond of having his assistance in the Revenue. I have spoke to the king and some of his ministers about him, but there appears some difficulty in his case, and in the way of having him brought over. If your lordship can suggest anything to me that can ease this matter, I should be very glad to receive it. The elections are gone as well as we can wish, and even beyond our expectations. I have no apprehension of anything but our being too wanton with our suc-

* Stair Papers. The Earl of Halifax died in May of this year.

cess, which I hope we shall have prudence enough to avoid. I shall not enlarge much in a letter that goes by the post. When a safer conveyance offers, I shall take the liberty of writing to your lordship in confidence."

The subject of the employment of Law in England is referred to by Lord Stair in the following letter to Secretary Stanhope, written partly in French and partly in English :*—

(*Extract.*)

"*February* 12, 1715.

". . . There is a countryman of mine named Law of whom you have no doubt often heard. He is a man of very good sense, and who has a head fit for calculations of all kinds to an extent beyond anybody. . . . Could not such a man be useful in devising some plan for paying off the national debts? If you think so, it will be easy to make him come. He desires the power of being useful to his country. I wrote about him to Lord Halifax. . . . The King of Sicily presses him extremely to go into Piedmont, to put their affairs upon the foot they have already spoken of. I have seen the king's letters to

* The despatches and letters, or parts of letters, written by Lord Stair in French, were intended to be seen by the king, and were so written to save the trouble of translation. I have rendered in English the French portion of the above letter relating to Mr Law. The English portion, which has been omitted, relates to personal concerns. George I. took a great interest in the affairs of the foreign department, and was by no means inclined to surrender this department of government to the theory of a responsible cabinet, by which he himself was to be made comparatively a cipher.

Law, which are very obliging and pressing. I would not venture to speak thus to you of this man had I not known him for a long time as a person of as good sense as I ever knew in my life, of very solid good sense and very useful; and in the matters he takes himself up with, certainly the cleverest man that is. . . . How long do you think the king will incline that I should stay at this Court? The reason of my question is plainly that I foresee that if my stay here is to be long, I shall in no measure be able to support the expense of it; and I do by no means love to be importunate to the ministers, or to be burthensome to the king. You may be assured of the truth of what I tell you, that everything at Paris at this time is double price to what it used to be, so that my house here and my stables, my servants' wages and board-wages and clothes, will do more than exhaust all my appointments, as you shall see by a scheme that I shall send you one of those days; and then there will remain my table and all my own personal expenses and extraordinaries to be taken out of my own funds. Now my circumstances are such that at my coming away I found myself obliged to sell a part of my estate, and I have still remaining debts to the value of between £4000 and £5000. As I love to pay my debts and to wrong no man, I left my pay as gentleman of the bed-chamber, and the part of this year's growing rent of my estate, for a fund to my agent to pay the bills I drew upon him, payable to the tradesmen I owed money to; so that I have nothing but the king's money which I brought over with me and my appointments of envoy and plenipotentiary to trust to."

Lord Stair's suggestion as to Law's assistance being had recourse to in the matter of English finance is thus disposed of by Secretary Stanhope (April 30, 1715): "Though I have not hitherto, in my returns to your lordship's letters, taken notice of what you have writ to me once or twice about Mr Law, yet I did not fail to lay it before the king. I am now to tell your lordship that I find a disposition to comply with what your lordship proposes, though at the same time it has met, and does meet, with opposition, and I believe it will be no hard matter for him to guess from whence it proceeds." Most poeple may think England made a great escape from danger by Law's energies being entirely devoted to the finances of France, but it is doubtful whether he would have proposed anything more ruinous than the South Sea scheme of 1719, which was gone into with the sanction of the British ministry.

The influence of France was paramount at the court of Madrid during the lifetime of Louis, and notwithstanding the recent treaty of peace, the relations of Spain with England continued to be of an unfriendly character.

Mr Methuen (Ambassador at Madrid) to the Earl of Stair.

". . . Our affairs and trade in Spain are in the utmost confusion, and will never mend whilst this court is entirely governed by that of France, as I can assure your lordship it is in all respects at present; for unless that be the true reason, I am at a loss to find a good one for the Spaniards using us as

they do. . . . Our court continues at Aranjuez, where they divert themselves very well without troubling themselves how the world goes, the care of which they leave to his most Christian Majesty."

A more decided step in a direction opposed to the interests of England was taken by Spain, with the aid of France, in the course of the summer.

In violation of the treaty for a suspension of arms between the belligerents in the late war, and when arrangements for the evacuation of Majorca were in dependence between Stair and the French minister De Torcy, that island (at the date of the treaty in the occupation of the Imperialists) was attacked in force by the Spanish and French fleets, and obliged to capitulate.* The injustice of this proceeding was, in compliance with instructions from his court, pressed by Lord Stair with considerable emphasis upon Louis and his minister, the result at Paris being a violent personal quarrel between De Torcy and Stair.† With reference to this dispute, and also to the designs of the Jacobites, General Stanhope wrote to him (July 20, 1715) that his letters had been laid before the king, "who is perfectly satisfied with your lordship's conduct in all this matter that has passed between you and the Marquis de Torcy; and though his Majesty is sensible of the extraordinary proceeding of the French court, yet he does not think it fit that in this juncture any notice should be taken of it, but that your lordship should continue as you have

* See Letters in Appendix to this chapter.

† A full account is given of this quarrel in Stair's Journal,—Hardwicke Papers, ii. 530.

done; and though this must be no small mortification to your lordship, after what you have met with there, yet it seems to be so necessary for his Majesty's service in the present situation of affairs that I doubt not but your lordship will cheerfully comply with it. I am directed to acquaint your lordship that the king is not of opinion your lordship should give in any such memorial as you mention in your letter relating to the Pretender. Whatever encouragement or assistance that court has thought fit to give for promoting the design which now seems to be on foot in his favour, his Majesty judges that the surest way to defeat it is to show spirit and vigour here, and which I hope has been done to-day both by his Majesty and the two Houses of parliament, of which your lordship will be able to judge by his Majesty's speech, and the address of the House of Commons, which I have herewith ordered to be transmitted to you; and as I doubt not that we shall very soon see the good effects of the proceedings of this day, and as the same were in a great measure owing to the advices your lordship gave us by your letter of the 28th, which I received this morning, your lordship may be satisfied you have done his Majesty very acceptable service; and I have his Majesty's orders to tell you so, which I obey with a great deal of pleasure. Though his Majesty thinks it absolutely necessary for his service your lordship should continue at that court, yet he is not as yet determined whether it shall be in the way your lordship has hitherto appeared there, or with a character. As soon as his Majesty is come to any resolution in this point I shall acquaint your lordship. In the mean-

time, I am directed most earnestly to recommend to your lordship to spare no labour nor expense in procuring the surest intelligence of what is passing in relation to the Pretender, and when anything comes to your lordship's knowledge that can be of the least consequence to his Majesty's service, you will not fail to transmit it to us by a messenger—of whom your lordship shall always have one or two with you."

While matters were in this unsatisfactory condition at Paris, Majorca was forcibly taken possession of by the Spaniards and French.

In August Lord Stair received the following characteristic letter from Mr George Bubb, afterwards Lord Melcombe, who had succeeded Methuen as ambassador at Madrid :—

"MADRID, *August* 5, 1715.

". . . I was always apprehensive from the first office Mr Methuen passed about Majorca that it would not meet with success, and I am heartily sorry your lordship does not meet with enough success in everything to encourage you to stay ; but am fully satisfied, if that court would be glad to have you gone (as your lordship says), it is the only one that ever was weary of you. . . . Methuen's cook is so very much out of order that he dare not stay with me, and, what would be very strange anywhere else, I cannot get one here. I must beg of your lordship to let your *maître d'hôtel* use his endeavours to send me one. I will take care of his expenses hither, and do not much care what I give him, if he be a very good one ;

I should be very glad if it could be one that had any notion of our English cleanlyness. One thing he must know, which is a very extraordinary one, and that is, to do pretty well with almost nothing at all, for we have hardly anything here to eat, and less (I think) of what is necessary for a good cook to do anything with well. I believe one that has lived with general officers, and been used to make a shift with what he could get, would be the most proper. However, I beg your lordship would not give yourself much trouble about it, which is all I have to add, for you may be sure that I am glad to make an end of so impertinent a request."

CHAPTER V.

Attitude of the Jacobite party towards the government—Death of Louis XIV.—Schemes of the Jacobites counteracted by Stair—Notices of the Insurrection of 1715 in letters to Lord Stair from the Duke of Montrose, the Lord Advocate Sir David Dalrymple, and Secretary Stanhope.

The partisan attitude assumed by the Government of George I. upon his accession to the throne of Great Britain, whether forced upon them by the necessity of the case or not, tended greatly to stimulate the endeavours of the Jacobites to effect a restoration of the Stuart family. The new order of things was the government of an exclusive party headed by aristocratic Whigs, which tended to alienate not merely inactive and neutral people, but also, as we shall immediately see, many independent Whigs and protestant Tories, otherwise favourable to the Hanover succession.

On the continent Louis XIV., though old and infirm, still survived; and it was an article of belief with all well-wishers of the Stuarts that his regard for that family was a lively sentiment, not to be scared by misfortune or affected by the articles of treaties, which would, with a favourable opportunity, develop itself into active assistance. Encouraged by this state of matters at home and abroad, and easily

buoyed up with uncertain hopes, the Scottish Jacobites put themselves in motion, and before many months had passed after the death of the Queen, their emissaries had spread a web of intrigue not only over Scotland and the north of England, but over Paris and France. To discover and render their intrigues of no avail was a task belonging to Lord Stair's mission; and in the hands of so clever a tactician, not over scrupulous as to the means to be used for procuring information, one of not insuperable difficulty.* The Stair Papers afford ample evidence of the industry with which idle adventurers and broken men, Irish priests and merchants' clerks, were enlisted in the service of the minister at Paris of the Hanoverian family.

Louis XIV. died in the first week of August 1715.† The parliament of Paris met on the day after his death, and unanimously declared itself for the Duke of Orleans as Regent. At this meeting of the parliament, marking at once his espousal of the Duke's party in the country, Stair was present in the Lantern of the hall as a spectator of the proceedings.

* In Lord Stair's Journal this entry occurs, 22d July 1715: "I hear more and more of the Pretender's design. I was resolving to send into Lorraine when I received Secretary Stanhope's letter on the 20th, by which it appears they are much alarmed in England with the Pretender's intention to land immediately. He recommends me to save no pains nor expense to be well informed."—Hardwicke Papers, ii. 532.

† The last days of the aged monarch are duly chronicled in the Journal. Stair is said by Voltaire ('Louis Quatorze') to have betted in the summer of 1715 that Louis would not live over the month of September; "A strange bet," Earl Stanhope remarks ('History of England,' c. 5), "for an ambassador!" With deference, however, to the noble author, the character of the bet might depend upon the circumstances in which it was offered or taken; and the scene of the bet may have been a social party, at which diplomatic etiquette was not so strictly observed.

What the Jacobites much wanted in the Rebellion of 1715 was a leader, for neither the Chevalier (as the exiled prince was frequently designated) nor Mar nor Ormond were equal to the occasion. Lord Bolingbroke's ability was that of a statesman and civilian, and his advice in military matters was either disregarded, or there were no means of complying with it. The death of Louis was a stunning blow to their cause, deficient as they were in arms, foreign auxiliaries, money, and concert among themselves. The Regent Orleans, though bearing no ill-will to the Stuarts, had his own views to forward, and was more amenable than the ministers of the old *régime* to the memorials and arguments of the British ambassador. With all these things against it, can we be surprised that the Jacobite rebellion of 1715, after a few faint gleams of success, soon collapsed? Its history has been traced by several able pens: I shall here, by way of illustrating, if not of supplementing that history, give a few notices of its progress contained in hitherto unpublished letters.

Bolingbroke's arrival in Paris is mentioned in a letter of Horatio Walpole, brother of Sir Robert and envoy at the Hague, to Lord Stair, April 16, 1715: "You will have received, as well from England as from Calais, an account of Lord Bolingbroke's being arrived in France, disguised in a black wig and a countryman's coat. It is conjectured here that Mr Prior's arrival in England hastened his lordship's flight; you are best able to judge of that. We hear that honest Mat is merry, has been received very well by the king, dined with the ministers of State, was examined by the cabinet council, and is

resolved to tell truth." Bolingbroke waited upon Lord Stair immediately upon his reaching Paris,* and promised to him that he would enter into no Jacobite engagements—a promise which was very soon broken.

The first Duke of Montrose, grandson of the great Marquis, and a personal friend of Lord Stair, was at this time Secretary of State for Scotland. Writing to Stair from Edinburgh in February 1715,† after mentioning the state of the elections in Scotland, his Grace proceeds :—

"Having thus given you a short line of the situation of our affairs here, allow me to make a step to you, and to assure you that I am very glad to understand from your lordship that though the Court of France talks big, yet it is your opinion they will come to our hand if we don't submit, which I believe we are in no hazard of doing. It is strange that, notwithstanding our elections go on in this country even beyond expectation, yet there never was more noise here of some attempt very soon to be made by the Pretender. It is certain his friends in the Highlands were never more agile; besides, we have particular information which leads us to believe these people

* Letter to Sir William Wyndham, confirmed by Stair's Journal and Correspondence.

† Stair Papers, vol. i. The Duke, a supporter of the Union and the Protestant succession, was appointed Secretary of State for Scotland after the accession of George I., but resigned in little more than a year. His Grace was in politics a "Hanover Tory." His letters to Lord Stair are autograph, but (with hardly an exception) unsigned. He was not much liked by the Jacobites, who upbraided him (in prose and verse) for having deserted what they regarded as the traditional politics of his family, forgetting, perhaps, the earlier passages in the career of the first Marquis, his grandfather.—See Hogg's Jacobite Relics, 2 vols.

have some foolish project in their head, and have for some time been preparing for it. If they are so mad as to stir, it is very plain it must soon end in their ruin. All your friends here are very well. It is time for me now to end when my paper has failed me. My dear Lord, believe me ever sincerely yours."

In May 1715, Lord Stair's cousin, the hon. Charles Cathcart, then lieut.-colonel of the Scots Greys, writes from London that the Duke of Ormond had been practising upon the mob to show themselves if he should happen to be sent to the Tower; that the mob were mightily in favour of the duke, and a picquette had been sent to reinforce the Guards.*

In July following, the ambassador informs Secretary Stanhope of a change of opinion in France as to the chances of a successful invasion of England:†—

". . . M. d'Iberville [the French minister in London] had writ to Paris for a good while together that the Pretender's party was so very considerable in England, that we were upon the point of seeing a total revolution; that to bring it about, the Court had nothing to do but to let the Pretender come over and give his friends a little encouragement by the neighbourhood of a body of troops, and to act with a high hand with our Court, who would be easily discouraged. The resolution was taken here to encamp a body of troops at Dunkirk, under the pretence of

* Stair Papers, vol. iv.

† The Earl of Stair to Mr Secretary Stanhope, July 12, 1715—Stair Papers, vol. iii. B.

working at the canal—not that they intend to carry out the work, for they have no money. The Pretender's friends writ to Paris from Lorraine that they expected every day to go over into England, because things there were ripe for their coming. The Duke of Berwick came from his house in the country to ask leave to accompany the Chevalier, and there were wagers laying in Paris every day among very considerable people that the Pretender should be upon the throne in a year. I have reason to believe these intelligences from M. d'Iberville did not a little contribute to the expedition of Majorca, for they firmly believed the Government to be in such distress, that it was not in a condition to resent any injury, or to give them any disturbance in their projects. But since they have seen the Duke of Ormond land in England without any manner of disturbance, and that they have felt their friends' pulses beat low when it came to the point of drawing their swords, they begin to think that M. d'Iberville has been ill informed of the true state of things in Britain, and they too credulous. They have sent away M. le Blanc, with a positive declaration that they will not work at the canal; they declare they will not meddle with the Pretender; and everybody condemns M. de Torcy for the expedition of Majorca, which exposes him to the just reproach of all the world and the resentment of their neighbours, and to the evident danger of losing a considerable body of troops. . . ."

In August, the Lord Advocate (then member for the Haddington burghs) writes to Lord Stair from London :—

"I come from our Committee, from whence people look for the articles of impeachment against Earl Strafford in a day or two. This afternoon the news we have from Scotland by express are far from being agreeable. In short, the Jacobites are encamped on Blair Muir, ten miles from Perth, where Lt.-general George Hamilton is, and, as we are told, several foreign officers. Of our lords our accounts speak of the Marquises of Huntly and Tullybardine, the Earls of Mar and Seaforth, Lords Drummond and Ogilvie, the Master of Stormont, Col. John Hay, Kinnoull's son, Strowan Robertson, and the Lord knows who more. At the same time, we are told that the Earls of Traquair, Nithsdale, Carnwath, Winton, Linlithgow, the Viscounts of Kilsyth and Kenmuir, with several gentlemen from the south, are gone north. The south country and the west is generally well affected to the king, but they want arms. The camp which the Highlanders have chosen is in a plentiful country, and St Johnston [Perth] being an open place will soon fall into their hands, which makes them master of the river Tay and of the Carse of Gowrie. General Witham writes that a regiment of foot is sent to St Johnston, which I fear is too small a force, though the townsmen, who are honest, have for some weeks been repairing a little citadel which Cromwell built, and which, with no great care or change, may be put in a posture of defence.* We wait with impatience the next accounts. . . ."

* Remains of this intrenched fort in the shape of deep embankments were visible in the first half of the present century. The fort was situated at the east corner of the South Inch of Perth, near the river.

Lord Stair himself had no great dread of the result of an insurrection. The rebels (he wrote to the Duke of Montrose) would be strong at first, and he would not advise to run one's head against them when they had their bellies filled with beef, and their heads with beer; "by the time they have lain a week under a hedge in the end of October, or beginning of November, it would be easy dealing with them; and he believed the army would melt in a fortnight to nothing." *

While holding this opinion as to the issue of an insurrection in Scotland, Stair was taking measures in France for disconcerting the Jacobite plans. In the course of the month of August, the old king being just dead, information was sent by him to England of certain ships laden with arms and stores for the use of the Chevalier lying at Havre; upon which intelligence Sir George Byng entered the road of Havre with a squadron and demanded the ships by name to be given up. This demand was pressed upon the Regent Orleans by Stair, and though the ships were not surrendered, orders were sent by the Regent to unload them, and to have the arms placed in the royal magazines. Lord Stair had an audience of the Regent, to thank him in his master's name for this compliance, and also for refusing to see Ormond and Bolingbroke, who had come to Paris. The Duke of Orleans, however, thinking perhaps he had in the mean time done quite enough for his English ally, did not care to be thanked for it, and looking very cool upon Stair, put an end to the conference.†

* Oct. 2, 1715—Hist. MSS. Commission Report, iii. 384.

† Stair's Journal—Hardwicke Papers.

The following extracts from letters* of the Duke of Montrose to Lord Stair in August, September, and October, are of interest :—

"London, *Aug.* 12, 1715.

". . . I am very glad, you may believe, that we have reason to hope this storm will blow over. I hope the advantage will be improved so far by putting the laws in execution that the king shall not be hereafter troubled with such attempts. Our friends in Scotland of the side of the Government are wonderful hasty; they have all taken arms, and muster daily. Our university of Glasgow has levied a company, and maintains them at its own charge, allowing each private man sixpence per day. I may venture to say my men are as forward as any, for they that take care of my affairs at home have them already putten into regiments and troops. In fine, you could not wish for more spirit than has generally been shown with us upon this occasion. I hope you will ever look upon me as one of the faithfullest servants you have. I promise you, your brothers and uncles are not more your servants."

"*September* 12, 1715.

". . . I could not slip this opportunity of giving you some account of the letters we received this morning by express from Scotland. They are dated on Thursday night last from Edinburgh, where they had just then received letters from Aberdeen by express, informing that the Highland army, as they call it, was beginning to join; and they are determined to begin their march on the 11th, in order to encamp

* Stair Papers, vol. iii. A.

at Tippermuir; that the laird of Glengarry's men were with Earl Mar; and that any day they were to be joined by Lochiel, Keppoch, Appin, Mackintosh of Borlum, and their followers; that the Marquis of Huntly and Earl Mar, who had taken upon them the titles of lieut.-generals, were to take separate routes, but to meet at Tippermuir; with this farther particular, that they had all entered into an association not to lay down their arms till they should establish the Pretender on the throne, break the Union, and extirpate Presbytery. These accounts further add that the laird of Invercauld, a man of some estate, and vassal of Earl Mar's, in whose house the Earl had lodged since he went to that country, had left them—for which his house was to be burnt. All these are strange stories, you'll say, and very odd news at this time of day; however, we can have no room to doubt that these people have some projects in head. . . . I must be sorry for it, even on the account of some of the persons concerned;—'*Quos Jupiter vult perdere*,' &c."

"*October*, 3, 1715.

". . . Our scene at present gives us no agreeable prospect. You would hardly well believe how many of our country folks have embarked themselves in this affair; but their support is not likely to be very considerable from their neighbours in the southern parts; and I must be of opinion their projects must crumble to nothing. In the mean time, the friends to the Government suffer considerably, the rebels being masters in the northern parts."

In the following despatches from Secretary Stan-

hope to Lord Stair, in October, considerable anxiety is shown, though no real alarm as to the result appears to have been felt on the part of the Government. An account is given of a well-known incident of the Insurrection—the passing of the Firth of Forth in boats by a large body of Highlanders and their occupation of Leith fort; and a suggestion is thrown out of the possibility of a landing of the rebels from the side of Ireland :—

"WHITEHALL, *October* 20, 1715.

". . . Your lordship hath done very right in sending to Cadogan to hasten the forces. 'Tis certainly prudent to make every thing sure; and you may depend upon it that no vigour will be wanting here. By the advices come this day from Scotland we have reason to hope for some very good news. The rebels, unable to subsist together, detached three thousand men, under the command of Mackintosh, Lords Nairne, Strathmore, &c., to pass the Forth in boats. About a thousand or twelve hundred got over in a dark calm night; the others were dispersed by our men-of-war; and 'tis said about a thousand were driven to the Isle of May. One boat, with forty men, was taken. Those who got over occasioned at first a great consternation; but the militia gathering together, and being reinforced by six hundred men from Stirling, with the Duke of Argyle at their head, have invested them in the Fort of Leith; and we hourly expect to hear they are taken or destroyed.* Our rebels in Northumberland are rather

* The Duke's investment of the fort came to nothing, as he had no cannon; but the Highlanders soon afterwards quitted it, retiring by the coast to Seton Castle in East Lothian.

decreased than otherwise, and are not four hundred men, though they have been up a fortnight. Carpenter, with the regiments of dragoons, will be up with them in two or three days at farthest. We have reason to believe that five regiments from Ireland are by this time landed in Scotland. Your lordship's notion of ending the Highland war in the winter is certainly right, and what will be put in execution. 'Tis indeed a great misfortune for the honest people in your country that the rage and despair of these villains have occasioned such disorders; but I am fully convinced that nothing could have contributed so effectually to settle the king's government as the madness of these people. A few months will effectually crush them; and his Majesty will then be in such a condition that I believe every power in Europe will court his friendship. The Duke of Orleans hath now an opportunity of securing it for ever; nor is any thing proposed which is not certainly as much for his own interest and security as for the king's. But I need not say any thing on this subject to your lordship, who have with so much success hitherto enforced every thing which was proper to cement a real friendship betwixt the king and the regent. I am ever, with the most sincere respect, my very good Lord," &c.

"JAMES STANHOPE."

"*October* 31, 1715.

". . . We have no account yet of the *late* Duke of Ormond.* For my own part, I am far from think-

* Ormond is so styled by Secretary Stanhope from his being now attainted, and thus *civilly dead.*

ing that it will be any disservice to the king's affairs if he and his new master [the Pretender] should both land; but the king takes this behaviour of that court as he ought, and it will be of some use to his Majesty to have learned thus early how much he may rely on the Regent. I really forgot this morning to know his Majesty's pleasure touching your taking a character [as ambassador] immediately or not, but since you want messengers I'll not detain this; there can, I think, be no haste, and, by the next occasion, I believe I shall have the king's orders to tell you so. . . . Is it not possible the Duke of Ormond may go to Ireland? I confess I wonder we have never had any alarm that way. Where do you apprehend Lord Mar to be bound? One is the more inclined to expect some design that way because it really appears to us that it will be impossible, as our forces are now disposed, for five hundred men to get together anywhere in England, unless perhaps in the mountains of Wales; and even from thence they would be driven in a fortnight. By Lord Mar's intercepted letters, which Pringle will send you, it is plain Lord Mar expected the Pretender in Scotland. The truth is, his person would be longer safe there than in any other part of this Island; but even there he would have good luck if he escaped being made prisoner till spring. Upon the whole, the more one thinks of it the more one is amazed at the folly and wickedness of his abettors here, and, I may add, at the weakness of the Regent who can be diverted by the frenzy of these madmen from pursuing his own true interest. Adieu!"

"Since writing what goes before, I have received your despatch of the 7th. Orders are sent to the Admiralty that our ships be directed to be alert. We have heard nothing of your *maître d'hôtel*, whom, in one of your letters, you mention to have sent after the Duke of Ormond; nor have we got any manner of account of that great general. The enclosed is an answer to a letter of compliments sent me by the Duke of Noailles, which I pray you to deliver, and to accompany it with as many compliments from me as you please. Pray let me know how he stands affected."

CHAPTER VI.

Lord Stair appointed to the colonelcy of the Enniskillen Dragoons—Correspondence with Marlborough—Purchase in the Army—Contraband trade between Paris and London in articles of dress—Aided by the employés of the Embassy—Lady Loudoun's birthday gown — The Duke of Argyle's silk stockings — The Duchess of Marlborough's boddices—Anecdotes of Stair, whether authentic.

Before resuming the notices of the Insurrection, after it was joined, somewhat late in the day, by the Chevalier himself, I shall take up one or two other threads in the personal history of Lord Stair which belong to the first year of his embassy.

Having been deprived by the Tory ministry of Queen Anne of his regiment of North British Dragoons or Scots Greys, Stair very naturally counted upon receiving another regiment from King George. To obtain a regiment (without purchase, if he could) was the main object of a memorial (printed in the Hardwicke Papers) addressed by him, in the end of 1714, to the Duke of Marlborough, who had resumed his offices of captain-general and master of the ordnance, and was a member of the Cabinet, though exercising very little influence. Neither the king, who looked narrowly to all army appointments, nor the duke, at first contemplated Lord Stair's receiving

the regiment designed for him without purchase. This regiment, afterwards the Enniskillen Dragoons, was then called Ecklin's from the name of its colonel, a brave soldier, but suspected of Jacobite principles.

Soon after Stair's arrival in Paris, the Duke addressed to him an autograph note :*—

"London, *Feb.* 11, 1715.

"My Lord,—I have been so out of order that I could not return you by the last post my thanks for yours of the 13th (N.S.) You may be sure that I shall be careful of being mindful of what you desire. As the king intends to oblige Colonel Ecklin to part with his regiment of dragoons for £3000, he having no troup, I am commanded to know if that purchase will be agreeable to you.† Pray write your letter in such a manner as I may read it to the king. Our elections go on very well, which is the best news I can send from hence. Pray pardon the blots of this letter, for I am so hurried that I hardly know what I say; and I hope I need not use many words to persuade you that I am always, my dear Lord, most faithfully yours, Marlborough."

Lord Stair's answer to this letter, though not preserved, may be guessed at from the Duke's reply :—

"London, *March* 4, 1715.

"I have received the favour of yours of the 8th (N.S.) I do wish with all my soul that your circumstances were as you yourself could desire. I never

* Stair Papers, vol. i.

† Colonel Ecklin, upon being deprived of his command, joined the rebel army.

shall be wanting on all occasions of letting the world as well as yourself see the sincere esteem I have for your lordship. It is not proper for me by letter to acquaint you all that passed on your subject with his Majesty this morning, but you may assure yourself that I omitted nothing that I could think for your service; and the king expressed himself very kindly and with great esteem for your person, which makes me heartily wish that you would resolve of having this regiment of Ecklin, which I do not doubt but I shall be able to bring so about as that it shall not cost more than £2000; and if it be of any ease to you, I offer very freely to join with you for your taking up of this £2000 on the easiest terms. I hope you will approve of a resolution I have taken, with his Majesty's leave, not to put the public to any expense on my account, as Captain-general, so that they may, if they please, give my ten pound a-day to such other expenses as they may put on the establishment of the Guards and garrisons. Pray let me receive your thoughts, and I shall punctually follow your directions."

Lord Stair meanwhile had written to General Stanhope that he left the whole matter in the hands of the Duke of Marlborough; Stanhope writing in answer, that he hoped the king would be very willing in good time to make up the purchase-money to Lord Stair, as it was impossible to be better pleased than his Majesty was with the choice he had made of his lordship to fill the difficult situation he was placed in. The correspondence closes in a manner very satisfactory to Stair, probably upon Secretary Stanhope's representation to the king, with this note from the Duke :—

"London, *March* 24, 1715.

"Till by this post it has not been in my power to acquaint you that I have received the king's directions for your commission for Ecklin's regiment, which I do with all my heart wish you joy of, especially since you are to have it without paying any money for it. Your countrymen, and particularly Lord Argyle, are returned so very much dissatisfied with Lord Marischal * that I believe they will prevail with the king to take his command from him.—I am, with much truth," &c.

Lord Stair continued colonel of the regiment of Enniskillens for about twenty years. According to a custom not uncommon in the army at that time, he provided (by arrangement with Government) winter-quarters and forage for the men and troop-horses, when not on duty, in his grounds of Castle Kennedy in Wigtonshire, where fatigue-parties of the men were occasionally employed in country labour upon the estate.†

At a period when the commercial intercourse between London and Paris was limited not only by restrictions of trade policy but by the slowness and difficulty of travelling, the facilities afforded by the members of the ambassador's suite and special messengers passing constantly between the two seats of Government, for executing commissions and carrying on a little contraband trade, was largely taken advan-

* George Keith, tenth Earl Marischal, afterwards in the public service of Frederick II. of Prussia, and that monarch's personal friend. He was captain of the Scottish troop of Grenadier Guards, of which he was deprived at the instigation (as here intimated) of the Duke of Argyle.

† Stair Papers, *passim;* Sir A. Agnew's 'Sheriffs of Galloway.'

tage of by the higher class of society in London. Thus, in April 1715, Colonel Cathcart writes from London to Lord Stair: "My Lady Loudoun desires the baron* may send over her gown unmade by some safe hand, and with it she desires seven English yards of culbertine (or, as the French call it, *mignonette*), for a head, and nine yards of the same narrower, for ruffles." The colonel writes again, in May: "Lady Loudoun begs your lordship will take the first opportunity of sending her over the gown and laces the baron bought for her, since she depends upon wearing them at the birthday."

To pursue the history of her ladyship's gown,—the next letter informs us that, "notwithstanding all imaginable precaution was taken, it fell into the hands of the custom-house officers; she had to buy it anew, but will have it to wear on the birthday." In the same month of May, Colonel Cathcart informs the ambassador's secretary (Thomas Crawford), "I must give you the trouble of a commission for his grace the Duke of Argyle. He wants half-a-dozen of pairs of stockings of *poil de chèvre* [goat's hair] of different colours of grey, some light, some dark, and long enough of the feet and legs. There is a shop, I think, at the Palais, between the *Rue d'Arbre Sec* and that of *St Honoré*, where I have bought of them. Pray let me have them by the first sure hand, with their price in English money."

* The Hon. George Dalrymple, a baron of Exchequer in Scotland, Lord Stair's younger brother and then residing with him at Paris. Their sister, the Countess of Loudoun, was a person of great beauty and accomplishments. In her later life she resided at Sorn Castle in Ayrshire and was an extensive and public-spirited agricultural improver. She died in 1777, having passed her hundredth year.

In June the colonel thanks Mr Crawford for a letter he had by the post, "and for his Grace of Argyle's stockings, which Lord Cobham's valet-de-chambre brought me: he [the duke] was much pleased with them, excepting the pair I send you back to be changed for one of a scarlet colour, if that is to be had without a mixture of any other colour; if not, he desires a pair as near to white as possible: I have received the money for them; draw upon me for the sum, and I'll answer it. The bearer brings you three dozen of women's gloves, six pairs of stockings, and two pieces of ribbon. The rest of his lordship's commissions shall be sent the next occasion going."

The three dozen of ladies' gloves for the ambassador, who had not yet been joined at Paris by Lady Stair and her daughter, would no doubt be intended for the hands of Parisian belles, with some reference, perhaps, to diplomatic considerations.

His Grace of Argyle ("the State's whole thunder born to wield") was so satisfied with the execution of his commission for the silk stockings, that the secretary is asked to undertake another commission. Colonel Cathcart writes in July: "The Duke wants three dozen of the large kind of knives, spoons, and forks of the St Cloud sort of chiney [handles], and two dozen of a less size for dessert.* Pray let them be of the finest, and take your money for them and the stockings from Earl Stair. I shall be accountable to his lordship for it. If you have any correspondence with the Melfort family [Drummond], pray make them and M. Saladin my compliments."

* The *Potterie de St Cloud*, under the direction of the members of the Chicanneau family, was already famous for its porcelain.

Among Stair's most intimate and attached friends was Sarah Duchess of Marlborough. Although now verging on old age, her energy and activity of mind continued unabated, and she entered with equal keenness into the affairs of society, dress, scandal, and politics. The following epistle relates to commissions of a rather delicate kind :—

"London, *February* 22, 1715.

"My Lord,—The messenger that brought me the favour of your lordship's letter with the *bodyes* promised to give me two days' notice, but he came last night when I was engaged to company, and said he was ordered away early this morning; and in that hurry I could only give him a pound of tea, which I thought very good, and remembering that it used to be very acceptable in France, I took the liberty to send you a taste of it, that you might employ me in that or in any thing you care for that is better here than there. And though I am sure nobody wishes more to be of any use to your lordship than myself, I can't perform better in anything than you have done in my small affairs, for I never had any thing so easy and so well made in my life as this pair of bodyes, and Lady Harriott's* is the same; and since you are so wonderfully good as to encourage me to trouble you again, I will beg to have two pair more of bodyes, both of them of white taby; that pair that is for myself I would have quite plain, as the last were made, but the little pair for Lady Harriott I

* Lady Harriott Godolphin, the Duchess's grandchild, by her eldest daughter married to Lord Godolphin. Lady Harriott was afterwards married to the Duke of Newcastle.

would have bound with a little gold braid before only, as their fashion is to do them; and when these bodyes are made, I believe it would be very easy by them to make a night-gown for me and a *monto* [qu. manteau ?] and *peticoate* for Lady Harriott. I am in no haste for either, but would have them up on any occasion that one need not be troubled with the custom-house people. And now I must beg leave to tell very exactly what I would have. My night-gown need have no peticoate to it, being only of that sort to be easy and warm, with a light silk wadd in it, such as is used to come out of bed and gird round without any train at all, but very full; 'tis no matter what colour except pink or yellow, no gold nor silver in it, but some pretty striped satin or damask, lined with a tafety of the same colour. Lady Harriott's is to be a monto and peticoate to go abroad in, but I would not have any gold or silver in it, nor a stuff that is dear, but a middling sort that may be worn either in winter or summer. You have seen her, I believe, but however 'tis not amiss to say she is above thirteen years old, that they may the better guess at the length of the monto; and if they are as exact as the taylor was in the bodyes, it will not want the least alteration. I am very much obliged to Lady Stair for the good offices she has done me to you. I am sure I was so well pleased with her that I lamented very much that I had lost so long the satisfaction of so agreeable an acquaintance; but if I live to see you in England again, I don't doubt but she will return from Scotland, and then I shall take all opportunities to show that I wish for her esteem. I have seen several of the French that agree very

well with what you write. I have known some that were very complaisant and agreeable in conversation, but I never had the luck to meet with one woman that was bred in France that was sincere. I am sure you will have an account from better hands of any thing you care to hear of in this country; but I can't help saying that I find all people agree that we have so good a parliament that there is no reason to doubt of their doing every thing that is good for the king and the public." *

As a *pendant* to the Duchess's caustic remark upon the ladies of France, may be given Lord Finch's equally severe observation upon those of England:—

Viscount Finch to the Earl of Stair.

"*September* 12, 1715.

". . . I hope, my dear Lord, you will make reasonable allowances to one who forgets everything he should remember, and remembers only one woman whom he ought long since to have forgot, and then you will the more easily excuse my not having sent this sooner. . . . With all the ill that you are supposed to have said of your women in France, I dare say they are as good as ours are here; or rather ours are as bad as yours, and much simpler. Ours are most certainly fond of nothing but being talked of, and would rather have scandal cast upon them than not be mentioned; and God knows one can't say any good of them. If I could persuade my father to let me come over to you for a month or two, I should think myself exceeding

* Stair Papers, vol. iv.

happy. Nothing but the noise and nonsense of London for a whole year round is intolerable."

Soon after the death of Louis XIV. Lord Stair was invested with the full character of ambassador-extraordinary to the French court. His public entry as ambassador, a formal and expensive ceremonial now disused, did not take place till February 1719.

For several anecdotes related of Lord Stair when at this time at Paris I have discovered no good authority, as of his frequenting coffee-houses incognito in order to discover the secrets of the Jacobites, and his playing for high stakes with political ladies. One anecdote has it that he was bid by Louis XIV. enter a carriage before himself, and that he did so as a piece of good-breeding when the king desired him. This last has an air of probability, Stair being on all hands admitted to have been of studied politeness of manner; but it is well known that Louis disliked his ways, and shunned being narrowly observed by him when dining in public and on other occasions; so that their having gone in a carriage together is not at all probable, while it is never alluded to by Lord Stair himself. One of his anonymous biographers asserts that a gift he sometimes, when ambassador, made to a person of distinction whom he wished to conciliate, was a pair of Galloway ponies, which, from his connection with Wigtonshire, may possibly have been the case, the pure breed of small Galloway horses being then nearly extinct and highly valued.*

* Marchmont Papers, iii. 345.

CHAPTER VII.

The Chevalier's journey through France, and embarkation at Dunkirk—Memorials by Stair, and equivocal conduct of the French government—The Chevalier in Scotland—Notices of the rebellion in letters of the Duke of Montrose, the Lord Advocate, and Sir Hew Dalrymple—Measures of the British government to prevent the Jacobites being harboured in continental states—Despatch from Secretary Stanhope.

As the winter of 1715-16 advanced, the interest of the Jacobite insurrection came to centre in the Chevalier's journey through France, and subsequent landing in Scotland. Lord Stair, in November 1715, memorialised * the Regent in very decided terms on the subject of the maintenance of the public faith of France, as engaged by the articles of the treaty of Utrecht, maintaining that His Royal Highness was bound to prevent the Pretender passing through French territory in order to embark for Britain; and that he should consider further, whether it was consistent with the national honour (with reference to that treaty) any longer to afford an asylum to the Duke of Ormond and Lord Bolingbroke, after the use they had made of it in having arms and munitions of war sent out of the kingdom for the service of the Pretender, in order to aid a rebellion against

* November 5, 1715—Stair Papers, vol. iii. B.

the king of Great Britain, who had been solemnly recognised as such by France. The memorial concluded with expressing Lord Stair's conviction that the Regent would give orders that the Pretender be not allowed to pass through France in disguise or otherwise, and that Bolingbroke be sent away and forbid to return.

Formal instructions were issued by the Regent in accordance with Stair's memorial; but it may be doubted whether they were meant to be obeyed, as Bolingbroke remained in France, and the Chevalier, quitting his residence at Bar in Lorraine, travelled across the whole breadth of France to St Malo, and, after an ineffectual attempt to embark, rode on horseback without molestation from thence to Dunkirk.*

Bolingbroke, now holding the seals of the Pretender's Secretary of State, wrote to him from Paris in November: "The Duke of Ormond's going off has made Stair redouble his diligence, and his spies are upon every road near the city; I have done my utmost to give him information that may mislead him about your Majesty, and I hope not without some success." And in another letter: "Stair did not know in many days of your Majesty's departure (from Lorraine), neither can I yet say that he knows certainly the route which you have taken; but the length of the journey, and the delay which you may be obliged to make on the coast, will probably give him time to find you out. He has already complained that you

* It is unnecessary to notice the base insinuation in the Memoirs of the Duke de St Simon of Stair having planned the assassination of the Pretender, when on his journey from Bar, by the hands of a Colonel Douglas, an Irishman in the French service. The insinuation, for it is no more, is as malicious as it is entirely unconfirmed.

are removed from Bar, and has asked to have the coast visited. The Maréchal d'Huxelles sent to me immediately, and the orders are so given that your ships will be overlooked. Should he [Lord Stair] be able to point out the vessels to them, or to say positively where you are, I doubt the Regent would think himself obliged to stop both." At the end of this letter it is added: "Since I wrote thus far, the Duke of Berwick has been with me; he just came from the Regent, who has sent a detachment to stop your Majesty at Chateau Thierry, where Stair has received information that you are."*

Having escaped the vigilance of Stair, the Chevalier sailed from Dunkirk and landed at Peterhead, on the east coast of Scotland, towards the end of December. Making his way to Perth by Feteresso, Glammis, Dundee, and Fingask Castle—at each of which places he slept a night—he arrived at the palace of Scone on the 8th of January, where he resided till the 30th, occasionally visiting Perth to review the clans favourable to his cause, then encamped on the North Inch of Perth.

The two following letters from the Duke of Montrose to Lord Stair,† founded no doubt on the best information, refer to the state of matters in Scotland at this point of time:—

"LONDON, *January* 26, 1716.

"MY DEAR LORD,—On Sunday morning last I had the pleasure to receive your letter of the 28th, N.S. I need not tell you how acceptable your letters

* Stuart Papers, in Appendix to vol. i. of Earl Stanhope's England.
† Stair Papers, vol. vii.

are to me. I am glad to be able to assure you that the Houses of Parliament show so much spirit, such confidence in his Majesty, and such a regard for the liberties and honour of their country, that we were never less afraid of the Pretender than now when we have him among us; and I think it is hardly to be doubted that we shall soon see the king make as great a figure abroad as ever any of his predecessors did. . . . Amidst the satisfaction I have to see the parliament enter so heartily into the true interest of the nation, I cannot but have some melancholy reflections upon the dismal circumstances our country is in by this rebellion. What a weight of misery have some of our unhappy countrymen brought upon themselves and us! That they should pay for their wickedness and folly is but reasonable; yet I heartily agree with your lordship, that as it is necessary to make examples, it is to be hoped severity won't be carried so far as that justice should have the air of cruelty and, may I add, of national revenge. You know as well as I how hard it is sometimes to make neighbours understand our concerns, or think of them in the manner they ought to do, if, by thinking we lye open at present, they go on without reflecting on the consequences. I am of opinion they'll mistake their measures and make both themselves and us very unhappy; but these are speculations more proper for a pipe than a letter, and I am resolved not to be out of humour, tho' I believe it will be pretty hard to keep one's temper if there does not appear as great a disposition to redress grievances as to punish crimes. It is certain the Pretender's presence has neither added numbers nor spirit to his party. I

am assured that Mar suffers at both hands: his new master blames him for misrepresenting things to him, and desiring him to depend upon numbers which don't appear; and the Jacobites say he promised them a prince who should give new life to his affairs by his personal endowments and the assistance he was to bring them from abroad; so, as it seems, both are disappointed, and will still have more reason to complain if we may believe that our general will at last make a visit to Perth. Did your lordship ever read a famous Scots book called 'Wallace,' in which I remember is this passage, where Wallace and Sir John the Graham are deliberating about taking the castle of Lochmaben—

> 'The wise Knight said,
> If that the men be out,
> To take the House
> There is but little doubt'? *

By this your lordship sees I am of opinion there won't be much blood spilt. I can have no notion that the rebels will shut themselves up in Perth, and as little that 4000 or 5000 men, such as they are too, will venture to make head against 11,000 regular troops. You will perhaps be surprised when I make the number of the rebels so inconsiderable; but consider that both Huntly and Seaforth are at home and in no disposition to stir; the last has submitted, and

* The Duke's recollection of the passage in Blind Harry's metrical History of Sir William Wallace is sufficiently accurate; but the castle was Crawford Castle, in the Upper Ward of Lanarkshire, which had been left unoccupied by its defenders. The lines in the poem read thus :—

> "This gud knycht said, an' that ye men war out,
> To tak the houss yar is bot litill doubt."
> —'Acts and Deeds of Wallace,' edition 1790, Book v.

I suppose the Marquis is fully disposed to follow that example.

"Our general [Duke of Argyle] they say is very much out of humour; but as I neither am nor ever hope to be of his cabinet council, I don't pretend to give you any particular account of him. Fred is still at Edinburgh, and, as we are told, bows lower and is civiler than he used to be; but this from second hand. I have heard a good deal of late of what you hint at, that the brothers [Duke of Argyle and Earl of Islay] have been very sweet upon some of your friends. I wish some of them have not been fonder of these *douceurs* than either your lordship or I could have wished. . . . I am assured, from very good hands in Scotland, that the Pretender's behaviour is exceedingly disgusting even to his friends. He pushes his bigotry so far that he won't allow a Protestant minister so much as to say grace to him; an instance of this they give, when he was at Brechin, where my Lady Panmure had a parson ready before supper, but he was not allowed to lift up his hands."

"*February* 3, 1716.

". . . About nine last night there came an express with a letter from the Duke of Argyle, dated Sunday last, the 29th, from Dunblane. The sum of his letter, for I read it, is this, that the army had advanced so far on their march to Perth, but that the roads were so bad by the great quantity of snow on the ground that they would be obliged to take very short marches; that the rebels, to make the march difficult, had in a barbarous manner burnt down most

of the houses and villages betwixt Braco and Perth, so that he should find difficulty enough in lodging the men under cover at night. On Monday the 30th they were to be at Ardoch, which is but five miles from Dunblane, and on Tuesday at Tullybardine and thereabouts; by that means it would be Thursday before they got before Perth.* The Duke says that by the surest intelligence the rebels at Perth don't make above 6000 men, so that he believes they will not stand the king's troops. Whether they will retire nearer the hills or dispute his passing the river of Earn would be known in a few days; he wished they would fight. We may certainly now expect an express from Scotland every [any] day; and as I think we can have nothing but good news, to be sure the moment we receive any thing considerable, Mr Stanhope will despatch your servant."

From the tone and expression of the first of these letters the Duke of Montrose appears to have anticipated (by a sort of *second sight*) that upon the Jacobite insurrection being put down, the Government would use measures of undue severity for punishing the actors in it; and being possessed by such a feeling, it is not perhaps to be wondered at that about this time he resigned his office of Secretary of State for Scotland. How far the Duke's anticipation was realised is a point of history upon which the Stair correspondence, to be referred to in the following chapters, may throw some additional light.

* General Cadogan entered Perth with a vanguard of 600 dragoons on the afternoon of Tuesday the 31st; Argyle and the rest of the army arriving at midnight.

A letter to Stair from the Lord Advocate* narrates one of the closing scenes of the insurrection and the retreat of the Jacobite force, with the Chevalier, from Perth :—

"EDINBURGH, *Feb.* 3, 1716.

"MY DEAR LORD,—You will have heard that the Duke of Argyle's army advanced from Stirling towards Perth; and having, on Monday, taken the castles of Braco (which was deserted) and Tullybardine (which was surrendered), the rebels fled from Perth in confusion, but in a body, towards Dundee. The Pretender came for the first time† (from Scone) to Perth on Monday about twelve at night—an apartment being fitted for him, with furniture brought from Dupplin; amongst other things a rich crimson bed. He went to bed about one, and was called at two, to acquaint him that the Duke of Argyle was approaching. This was done by the Earl of Mar, whom the Pretender blamed (as we are told, with tears) for bringing him here to his ruin. Whatever be in that, the fright was great, especially because of the surprise; for they had intelligence and easily believed that it was not possible to march the army with the train and necessaries; and in this they rested. It added to their fear that the Duke—believing the troops would be less in hazard to march under the favour of the moonlight than to lye still, and that they would rest better under the warmth of the sun—marched chiefly in the night.

"The Duke had notice at Tullybardine of their

* Stair Papers, vol. vii.

† He had been once or twice previously at Perth reviewing the Highland troops.

retreat, and Generals Cadogan and Witham, with a strong detachment, undertook to possess the place [Perth], which they did on the 31st January, at four in the afternoon. The Duke followed with the army, and arrived at midnight. He lay in the fine crimson bed, and got better rest. Next day, notice being given that a body of Highlanders were marched towards Dunkeld, and some to Dundee, Colonel Campbell, Fonab, was sent in pursuit, with 500 Argyleshire Highlanders. He dispersed one body of them, and took 300 prisoners, with some brandy. The Duke lay last night at Errol; and the whole army was this morning at Dundee, from whence General Cadogan was to be sent with a strong detachment of horse after the rebels, who go on diminishing, towards Aberdeen. Several frigates are on the coast; and Sutherland, with Beaufort, being masters of Inverness, the Pretender and his five officers and colony of Frenchified counsellors were [delete]. One would think that Almighty God had put all their reserves together to make a solid end of them and their designs. In this bag are the Pretender, his priests of all kinds, his Ministers of State, and the officers of the British-popish regiments raised and keeped up in France for our mischief. . . .

"*P.S.*—I send you a fine Jacobite paper; but it is Mar, and not King George and his minister Stair, who have sought the Pretender in France to bring him to ruin."

The Chevalier, retracing his steps along the east coast of Scotland to Montrose, embarked for France, in a foreign ship, on the 4th of February. A few

days after this date Sir Hew Dalrymple addressed this letter to Lord Stair :—

"EDINBURGH, *Feb.* 9, 1716.

"We had yesterday a report by Captain Grant, the brigadier's brother, who came from the north, that two English frigates had given chase to the Pretender and obliged him to put in at Stonehyve; but that is not confirmed nor believed this day. The Pretender set sail from Montrose on Saturday the 4th, with the Earl of Mar and the Lord Drummond; the Earl of Panmure and Mr Harry Maule went off from Arbroath on Friday the 3d. The number of the rebels is much diminished. They were not reckoned by the last account at outmost to be above 2500. The weather has been very favourable; and the Duke of Argyle was certainly at Aberdeen as yesterday. There is a long causeway through a morass, which cannot receive above two horses a-front, and the morass impassable in the winter-time in fresh weather; but now in the frost it is passable on either side of the causeway. If the rebels had been in any disposition to make a stand, a small number might have defended it against all our army, if the weather had not favoured us. The Marquis of Huntly has been treating, but has not kept a neutrality. It is said he was at Tain; but it is certain his men have been in arms, levying cess and quartering upon the neighbourhood. The Countess-dowager of Seaforth has seen better to the security of that family. Some say the Earl has not kept himself exactly to terms; but it is more generally expected he has, and so saved life and fortune, which

he owes entirely to his mother, who, though she be a very bigot Papist, would not expose her son's family for the interest of any king; whereas the foresaid Marquis owes his misfortune in a great measure to the Duchess [of Gordon], who both drew him into the snare and discouraged all means of bringing him out of it.*

"I must now beg leave to recommend to your lordship's favour Charles Dalrymple, son to James Dalrymple of Dunraggat, who served the Viscount and Earl of Stair faithfully. Charles was bred a merchant, but, by misfortunes and loss at sea, without his own fault, his stock is brought very low. What he proposeth is some employment in the Customs—of which he is abundantly capable. He is well affected to the Government, and attended at Stirling amongst the volunteers from Glasgow about the quarter of a year. The English commissioners, who make the plurality in Scotland, are no ways benign to the Advocate or me; so that we cannot do him service, though there are abundance of vacancies now in the north. And indeed our commissioners have no great character for their conduct, either here or above, so that many commissions are disposed of by the Treasury, and sent down to them without their participation. If your lordship be pleased to recommend him to Mr Walpole, as one whose forbears have depended on your family, Colonel Cathcart, who is now at London, will put Mr Walpole in mind and negoti-

* This was the Jacobite Duchess of Gordon, from whom the Dean and Faculty of Advocates at Edinburgh received and accepted the gift of a silver medal, having the head of the Chevalier on one side, and on the reverse the British Isles, with the motto, "Reddite."

ate his business. And now that I have mentioned Colonel Cathcart, your lordship will be pleased to know that the Duke of Argyle honoured him with carrying the news of the Pretender's being shipped off [from Scotland], though he will not carry the first tidings of it, because there was a packet sent (not from his Grace) to Berwick, and a flying packet directed from thence a day sooner. In all appearance, our rebels will be scattered in a few days. I pray God to direct the king to proper measures, to settle solid peace amongst us, and that our own divisions may not be the occasion of new troubles. There has been so great a disaffection, which cannot be cured on a sudden, that all who are true lovers of our present constitution or settlement should contribute everything towards peace and unity amongst ourselves. The Duke [of Argyle] has deferred his coming hither longer than was expected; and he is not like to come now till the rebels be dispersed. The Advocate's absence is not excused by the House of Commons. He has writ up to obtain his excuse, in which, I believe, he'll not prevail, and therefore must be going some time hence; but that is not yet adjusted in his family. Your lordship is very necessary where you are, but I believe it would be very agreeable to yourself, and very useful, if you could make a trip to England, where there is as great use for counsel and conduct in tempering mercy and justice, and in engaging the affections of the people as has been or may be of a long time."

To this letter a postscript is added from the Countess-dowager of Stair to her son :—

"All your friends have been prevailed with to recommend Charles Dalrymple to your favour in assisting him to procure some post in the Customs. Therefore he thought it necessary that I should join with the rest, and it is always good to prefer friends when it is in your power. And we have all reason to bless God for the happy turn made in our affairs, an account of which you have from the president; and I pray God, since He has done so much for us, we may not fall short in making returns of praise and thanksgiving. My dear son, adieu."

Upon his return to France, the Chevalier went first to see his mother at St Germains, and then, instead of returning to Lorraine, proceeded to Avignon. At the instance of Lord Mar and the Queen-dowager, Bolingbroke was about this time dismissed from his service, on the absurd pretence of having neglected to supply powder to the Jacobite troops in Scotland. This able but unreliable minister, immediately upon receiving his dismissal, commenced those schemes for making his peace with the British Government and being relieved of his attainder, in which, chiefly through the mediation of Lord Stair, he in the course of a few years partially succeeded.

The ill-advised prince, being now driven from British territory, while his adherents, pursued from their paradise of rock and moor by Cadogan's flaming sword, were scattered among the Hebrides and Orkneys,*

* "Tho' rugged and rough be the land of my birth,
To the eye of my heart 'tis the Eden of earth.
Far, far have I sought, but no land could I see
Half so fair as the land of my fathers to me."
—*Jacobite Song.*

the Government, with the sanction of Parliament, took measures to prevent them from finding an asylum in France and the neighbouring States. With this object, General Stanhope wrote to Stair :—

"WHITEHALL, *Feb.* 22, 1716.*

"I despatch this by a messenger to your Excellency with the enclosed speech of his Majesty to both Houses of Parliament, and their hearty and dutiful returns thereto by their respective addresses. By these your Excellency will perceive with what earnestness they request his Majesty's pressing instances with all states and princes in amity with him, that the Pretender may not be harboured in their territories ; and though the positive engagements the court of France is under by the 4th and 5th articles of the treaty of Utrecht should seem to make such instances at that court needless, yet the great encouragement which has been given to the Pretender from thence to make his late attempt of invading his Majesty's domains, the liberty he has had to pass through France in order to it, and since to return again to that country, the convenience and countenance his Majesty's traitorous subjects, and all others who have been willing to assist and follow the Pretender, have met with, are steps so directly opposite to the treaty, and so little agreeable to the good understanding and friendship between the two crowns, that his Majesty thinks it highly necessary that your Excellency should present a memorial to his Royal Highness on this subject, and insist in the strongest manner that

* Stair Papers, vol. v. See French letter of same date from King George to the Duke of Lorraine in Appendix to this chapter.

the Pretender shall not be harboured in the territories of France. And as your Excellency is not ignorant that the Duke of Lorraine has alleged in excuse for the part he has acted in relation to the Pretender, and the retreat he has hitherto given to him, his neighbourhood to France, which engages him to comply with what that court desires of him, your Excellency will represent in the memorial that his Majesty expects from that friendship his Royal Highness professes, that he will pass such offices with the Duke of Lorraine as may not leave him any excuse of that kind for the future. And as a further and necessary demonstration of his Royal Highness's disposition to live in a good correspondence with his Majesty, you are to insist that none of his Majesty's subjects who have been declared or are known to be traitors or rebels, such as Ormond, Mar, Bolingbroke, Panmure, and others, shall be allowed to stay within the dominions of France; and that those [officers] who joined with the Pretender in his late attempt, and were then actually in the service of France, such as Tynemouth [son of the Duke of Berwick], Shelden, and others, shall not only not be allowed to return to their former posts, but punished in such a manner as to satisfy his Majesty that his Highness did not approve of these proceedings, the approbation of which by the court of France would be an open violation of the treaty between the two crowns. These are, my lord, the heads of a memorial your Excellency is directed to present to the Regent without loss of time, and which his Majesty doubts not but you will enforce with such arguments as you shall judge most effectual to procure from that

court the satisfaction in these several points his Majesty so justly expects and demands. His Majesty has thought fit to write himself to the Duke of Lorraine on this occasion the enclosed letter, which your Excellency is directed to put into the hands of that Duke's minister at the court of France, his Majesty having no minister at his, and your Excellency will recommend to him the transmitting of it to his master without loss of time; and as your Excellency will see by the enclosed copy of it that his Majesty takes notice of the Addresses of his people, it is thought proper your Excellency shall give copies of the addresses of the two Houses to the Lorraine minister, to be by him conveyed to his master."

In pursuance of this despatch, Stair presented a memorial to the Regent, the answer to which was delivered in London through the hands of M. d'Iberville, the French ambassador. A slight was thus put upon Lord Stair, which Secretary Stanhope did not think proper to notice farther than by assuring him of the king's approbation of his zeal in the discharge of his duty, suggesting in his despatches certain other points in connection with the articles of the treaty of Utrecht to be laid before the Regent. This, and one or two other things of a similar nature occurring afterwards, created an unpleasantness in the relations between Lord Stair and the Court he was accredited to, which in the course of two years grew into larger proportions.*

* Extracts from General Stanhope's despatches to Lord Stair, of March 19, March 28, and April 16, 1716, showing the views of the British ministry prior to entering upon the Triple Alliance treaty, are given in the Appendix to this chapter.

CHAPTER VIII.

Anomalous position of the British Ministers and of the Regent—Motives dictating the negotiation which resulted in the Triple Alliance—Conduct of the treaty transferred from Paris to the Hague and Hanover—Secretary Stanhope and the Abbé Dubois—The Regent takes a more decided part against the Jacobites—Conclusion of the treaty—Importance of its provisions—The Lord Advocate dissatisfied with the measures taken by Government subsequent to the Insurrection—Family letters of Lady Stair and others—Burning of Castle Kennedy.

HAVING regard to the part they were now taking in the negotiations with France, the Whig ministers of King George were in a very singular position, if not upon the horns of a moral dilemma. They had in parliament declared the treaty of Utrecht contrary to the interests of Great Britain, and had formally impeached its authors.* But now, by the force of circumstances, they were constrained, in their relations with the Regent Orleans, to base their policy entirely upon that treaty and its articles. They were obliged to eat the leek, but, to give them their due, they never praised it.

* In the Postscript to Arbuthnot's History of John Bull (Swift's Works, by Scott, vi. 160, edit. 1824), the first of the Chapter-titles sets out —"How John was made angry with the articles of agreement; how he kicked the parchment through the house, up-stairs and down-stairs, and put himself in a great heat thereby;"—a picture not far from truth, although drawn by a Tory pen.

The Regent had also a difficult game to play. The political sentiments and traditions of France, and of himself as a Frenchman, had been for many years in favour of the Stuart dynasty. This current of traditional opinion within the territory of France still flowing, but now in a direction counter to the diplomatic relations between the two governments of England and France, had made itself practically felt in the course of the recent insurrection, much to the annoyance of the ministry in London. The British ambassador at Paris made representations, Secretary Stanhope wrote despatches, but the current continued without much variation. The Regent was often puzzled how to act, but with an exhausted exchequer and an ill-regulated condition of the public finances, a policy of peace was with him almost a necessity; besides that, his relations with his cousin, Philip of Spain, who, but for the Act of Renunciation, was nearer in blood to the throne and to the young King of France, and consequently to the Regency, than himself, were now beginning, through Jesuit intrigues, to be of a doubtful and not quite agreeable character.

In these circumstances, motives of policy dictating nearer approximation upon a friendly footing of the two countries to each other, it was expedient to put aside national traditions and religious feelings, and to draw closer by new ties the bonds of a recent treaty of peace, which otherwise might have started asunder. This political necessity or expediency seems at last to have pressed more urgently on the mind of the Regent than even upon George and his ministers, as it was from the French

side that the first proposal for a triple alliance between France, England, and the Dutch provinces was made.* General Stanhope, in a despatch to Lord Stair from London,† in March, expressly states that M. d'Iberville, "who has not thought fit to say one word himself to any of the king's ministers, has received orders to authorise M. Duyvenvorde, the Dutch ambassador here, to offer a defensive alliance between France, the King, and the States." The proposal thus made at first indirectly through the Dutch ambassador, after being brought more directly before the British ministers, gradually took shape, when their sentiments as to certain conditions of the treaty came to be unfolded.‡ In the end of May, Secretary Stanhope writes to Lord Stair, that when the three preliminary points — that the Pretender shall be obliged to go beyond the Alps, that the Regent shall not permit any of his Majesty's rebel subjects to continue in or return to France, and that the canal of Mardyck shall be rendered incapable of receiving vessels of war—are complied with, his Majesty is ready to send Lord Stair full powers to negotiate and conclude a defensive alliance with France and the States. §

* Sevelinges, Mémoires Secrets du Cardinal Dubois.

† This despatch is given in the Appendix.

‡ Stanhope to Stair, April 16, 1716; and other despatches of secretary Stanhope in Appendix. The first notice of the treaty in Lord Stair's Journal is in an entry of 11th March 1716: "By him [Lord Peterborough] I find the French are for making a treaty to secure themselves, and for having the performance of the former treaty to enter into this as conditions. . . . If I am mighty complaisant, I may have the honour of making this treaty; if I happen to be rusty, it will go into other hands."

§ May 31, 1716—Stair Papers, vol. v.

In the meantime, however, the Regent had instructed the Abbé Dubois to open a private correspondence with General Stanhope, which resulted in an arrangement for a conference at the Hague, and in an agreement to transfer the farther conduct of the negotiation from Paris to Holland.* In June, this change of method was communicated by Secretary Stanhope to Lord Stair; while in the same despatch he is assured that the king continues to place entire confidence in him, although, to prevent all occasion of jealousy, his Majesty had thought fit to comply with what was most agreeable to his allies.

After a conference in July at the Hague between Stanhope and Dubois (who, having no diplomatic character, pretended to be engaged buying pictures and rare books), they met again at Hanover, and settled the main points of the treaty.

"When this treaty is made," General Stanhope wrote from the Baths of Pyrmont, whither he had gone with the king, "and the Regent's behaviour

* The Abbé, who had more of the *suaviter in modo* than Lord Stair, using the most conciliatory language in a letter of 10th April to Stanhope, points to a commercial as well as a defensive treaty between the two countries: "Vous devinez assez que je serai charmé que mon maître prit les mesures les plus convenables à son intérêt; que ce fut avec une nation pour laquelle j'ai toujours conservé de la partialité et durant le ministère d'un ami aussi estimable et aussi solide que vous. Au surplus, Milord, outre l'intérêt de nos deux maîtres, je déclare que je serai ravi que vous ne bussiez que du meilleur vin de France au lieu de vin de Portugal, et moi du cidre de *Gold-pepin* au lieu de notre gros cidre de Normandie."—Sevelinges, Mémoires Secrets, i. 174. It was thus not the fault of the Abbé Dubois that, 150 years before the French commercial treaty of Messrs Gladstone and Cobden, General Stanhope's countrymen were not drinking claret and Burgundy instead of port, and the French cider made from the Golden Pippin apple of England instead of the coarse cider of Normandy.

shall have satisfied his Majesty that he is to be depended upon, I am persuaded the Regent himself will not be able to suggest any new arrangement, any other step expedient or necessary for his particular interest, to which the king will not readily agree, and which he will not as faithfully make good when agreed to." *

Dubois was perfectly aware that the change of national policy which found expression in the turn the negotiations were taking might not be generally acceptable in France; and Lord Stair is therefore informed in another despatch from Stanhope that "the Abbé, who doth certainly wish his master may comply with what the king requires, hath advised me to caution you against speaking to anybody besides the Regent himself; and particularly he would not have you mention any thing relating to this business to the Duke of Noailles." †

At an audience the Regent gave Lord Stair about this time, he expressed himself willing to yield all that was required as to the works at Mardyck, avoiding as much as possible needless expense in the alterations proposed to be made. In his despatch to Secretary Stanhope relating what passed, ‡ Stair considers "the Regent's reasoning very fair in all its points, and that what he offers should satisfy us. 'As for the Pretender,' the Regent said, 'I shall order all the troops in the neighbourhood to be

* August 3, 1716—Stair Papers, vol. vi.

† The Duc de Noailles belonged to that court party in France, headed by the Marquis de Torcy, called the "old ministry," most of whom had held office under Louis XIV., and were favourable to the ancient policy of France and the interest of the Stuarts.

‡ Stair Papers, vol. v.

ready, that if he make any difficulty to leave Avignon they may force him from thence without any further ceremony.' I told the Regent of preparations that were making for the Pretender in several ports of France. He asked where, and I told him what intelligence I had. He marked the places with his own hand, and told me he would send to the Count de Toulouse that minute to have the ships searched, and to give strict orders to examine narrowly everything that went out. Then he led me into the discourse that he had had the other day of people that had served him ill—referring to the Abbé de Tesieu, his former secretary. He made a reflection upon that occasion how unsafe it was to trust priests, who had often by-views and another master, the Pope, they depended upon. He expressed impatience to have this treaty concluded, and made great professions that the obstacles which had fallen in the way of a good understanding with the king had never arisen from the Regent. . . . The little king [Louis XV.] has been ill these three days of a looseness and gripes. The Duc de Bourbon had a fall the other day, hunting at Chatillon, and was like to have lost his one eye by a stroke of his horse's head that has cut a great gash in his eyebrow. . . ."

The progress of the treaty towards consummation is announced to Lord Stair by Mr Methuen, who was acting as foreign secretary in London during the absence of Stanhope in Hanover: "His Royal Highness [the Prince of Wales] doubts not but that your Excellency is informed of every thing that passed at Hanover with the Abbot Dubois, and that you will

have received directly from thence his Majesty's orders how to behave yourself during the whole course of this negotiation. The sum and substance of what was done at Hanover is that Mr Secretary Stanhope and the Abbot have settled there between them a project for a defensive alliance between Great Britain and France, in which there are some alterations from that which was at first sent to your Excellency. I have the original of this project here, and both of them have signed every article of it excepting that which relates to Mardyck and is left to be finally adjusted here." *

Towards the end of the year the "Triple Alliance" treaty was duly signed by the principal parties; the article as to the Pretender being removed from Avignon beyond the Alps providing that this should take place immediately after the signing, and before the exchange of the ratifications. The other articles related to the French king's engagement to give no assistance to the Pretender—to the engagement by the contracting parties to give no protection to the rebel subjects of either—to the demolition of the port of Mardyck—the maintenance of the succession to the crowns of Great Britain and France, as recognised by the treaty of Utrecht—and the furnishing mutual succours, of a specified amount, in the event of any of the contracting parties being attacked.

By those who were not in the secret, Stair was thought to have had more to do in the negotiation of this treaty than was the case. In November, the British minister at Venice (Cunningham) addresses him thus: "Having writ to your lordship the 31st ulto.,

* August 27, 1716—Stair Papers, vol. v.

to wish you joy on the success of your negotiation, I can only now add that I find the happy effects of it here, in having the smiles of the French party as much as if we had never been in war or never were to be again. Nay, they are so gracious that I can scarce dine without them; and as for yourself, you are in all respects the finest gentleman in Europe. They ask me if you was not bred in France; they are amazed when I tell them, to the best of my memory you was bred in Holland; but they own Holland has produced some polite gentlemen." *

I have been thus particular in noting the proceedings as to this famous treaty, which introduced a national policy into the counsels of England and France alien to the traditions of both countries, not so much from the part Lord Stair had in negotiating it, as from the influence it exercised upon the mutual relations of these countries, both at home and abroad, during the whole course of his embassy. It influenced in the most direct manner the war policy of France and England in the ensuing contest with Spain in the Mediterranean; and also the home policy of both, with reference to the attempts made to disturb the peace of England on the part of the Jacobites, and the peace of France on the part of Spain.

As to the farther movements of the Jacobites this year, a very few notices will suffice. In August,

* In another passage of this letter, Lord Stair is informed that "the opera at St John Chrysostomo takes mightily; it is called Ariodante; the subject a king of Scotland in a great struggle of passions; his daughter Ginevra, young and pretty, performs the best in Italy. The girl would willingly go to England, were it thought they would give her good encouragement; the Venetian minister will do his best to make the contract."—Stair Papers, vol. vi.

Lord Stair writes to Mr Methuen,* that "the Earl of Seaforth, General Gordon, and the principal rebels that were standing out in the north Highlands, are arrived in Brittany. They were obliged to send to Challiot for money to bring them to Paris—in all 52 persons. They came in an open boat round Ireland, with only two seamen and a boy. So it appears plain they knew of no formed project of another invasion. The Jacobites have no expectation from the Duke of Leeds' project, but give way to it to please him, and think it is no great loss if he fling himself away."

In the same month, the British envoy at Florence (D'Avenant) informs Stair that "the Court has been particularly civil to some of the Pretender's friends that have passed here—viz., the Abbé Melfort, Lord George Murray, and Mr Cresswell. They have been admitted to audience, have had the usual presents of wine and other refreshments, and have been introduced to the assemblies by the Grand Duke's servants, which seems a disregard to his Majesty, after the instances I made to his Highness not to receive the Pretender or any of his adherents. I hinted to the secretary of state that the civilities shown to these gentlemen might be taken ill in England, and was answered that, being people of quality, the Grand Duke could not avoid being civil to them."†

In October, when the treaty of the Triple Alliance was substantially concluded, the Chevalier de St George continued still at Avignon, where he appears to have had a serious illness; for Lord Cadogan,

* August 8, 1716—Stair Papers, vol. iii., B.
† Stair Papers, vol. vi.

writing from the Hague to Lord Stair in the end of the month, characteristically observes: "Your lordship will easily believe that the news of the Pretender's illness was not a little agreeable, and that we expect with the last impatience to hear what is become of him."

Not only Lord Bolingbroke but others of the Jacobites who had sought refuge on the Continent were now becoming desirous of making their submission to George I. Lord Stair having written for directions as to his behaviour towards these persons was instructed "not to hearken to them and be very cautious to observe all their motions, without having anything more to do with them." *

Sir David Dalrymple, although continued as Advocate from his acknowledged ability and his family influence, was at this time on no very agreeable terms with the ministry in London. They were, in fact, mutually dissatisfied with each other. In a letter to Stair in June, he feelingly complains of not being consulted in business, and hardly spoken to when he goes to London.† A certain alienation of feeling had been engendered in Scotland, extending even to the principal officers of the crown, on account of the measures adopted by Government after the suppression of the insurrection. The most odious of these measures were the proceedings had recourse to for the trial of the Jacobite prisoners, and the Act of Parliament with reference to the forfeited estates. The following letter from Sir David Dalrymple to Lord Stair,‡

* Methuen to Stair, Nov. 12, 1716—Stair Papers, vol. v.

† June 23, 1716—Stair Papers, vol. vii.

‡ In a previous letter from Sir David Dalrymple, in April, the fol-

after mentioning a tragic event in the Cathcart family, proceeds to remark upon public matters :—

"London, *June* 14, 1716.

"I come a very disagreeable errand. It is to acquaint you that poor James Cathcart [brother of Colonel Charles Cathcart] was yesterday killed in a duel near Kensington Gravel-pits by Alexander Gordon, a brother of Dalfollies.* The quarrel happened at Old Man's Coffeehouse. Cathcart was telling the story of a combat between Sir William Gordon and Lovat, which the town says was disappointed by Sir William's sending people to the place to prevent them. Gordon, who was in the same room and pretty near, pretended that Cathcart should give an author, which he refused in strong terms. The matter went to words, and the cane was offered, but the company interposed; yet nobody pretended to look after them when they went out; and people looking on Gordon as a scoundrel imagined that it would end in his being drubbed, to which nobody was willing to oppose himself; but they went without seconds and fought. Gordon was six times wounded; the last was through the lungs, and the sword, fixing

lowing passage occurs: "Yesterday, Baillie [of Jerviswood] dined at Earl Sunderland's, where Stanhope and Cadogan both were. Your lordship was mentioned with much esteem and affection. Earl Sunderland said, amongst other things, that when your letters were considered together, they were the best history that could be of this time, and of the great affairs which have been transacted for some years." As to Lord Stair's own letters, the Stair Papers contain comparatively few of them, and these either drafts or copies.

* Gordon was mortally wounded, and died soon after. He is called in Douglas's Peerage by Wood, Gordon of Ardoch—*voce* "Cathcart." James Cathcart, a major in the army, was killed on the spot.

in the backbone, broke. It would seem that the wound the major got, which is below the right breast, and pierces quite through to the left side, was given after his sword was broken, for the palms of both his hands and his fingers are cut as if he had only defended by endeavouring to force Gordon's sword, as it is most likely he did when his own was broken. He is much regretted, for he grew better every day. No breast could contain more friendship or greater gratitude. The colonel and his wife are much afflicted, as indeed we all are.

"The Duke of Marlborough recovers, though the town says that he never will come to the shape of his face or to his memory again; but it is a very lying town; his friends do not only assure the contrary, but give particulars, which are confirmed by many hands. M'Cartney * was tried yesterday, and found guilty of manslaughter; he was this day at Court. There are diverse speculations on that subject, but, for any thing I can learn, the evidence against him did not agree. Though Hamilton deposed very positively to the murder, he was contradicted in several particulars by other evidence; and in giving the charge to the jury, his testimony was on the matter set aside.

"The bill empowering commissioners to inquire into the value of the forfeited estates is by much the worst I ever saw, and is like to meet with opposition in the upper House. Men say that the prince [of

* General M'Cartney was Lord Mohun's second in his fatal duel with the Duke of Hamilton, and was popularly supposed to have himself stabbed the Duke, the seconds as well as the principals having fought with swords. He went abroad, but returned to take his trial.

Wales] is for amending it, and leaving the prerogative of pardoning for life and estate at large; and then the king's concession of the forfeited estates to be applied to the use of the public will only have effect to hinder the wasting of such estates by luxury or grants to courtiers, the only grievances hitherto complained of. Now if any amendment is made, it may throw off the bill to another session, for being (as we are pleased to call it) a money bill, we will not admit of any amendments: God grant no worse. I have lost my court by opposing it, but cannot repent. My health is so bad that I am resolved to go to the German Spa. I own to your lordship it is so much the more agreeable to me that I foresee, if I go home, I must act a pretty hard part, under the suspicion of the Court here, and under the constant peevish censures of some judges, not my good friends, and of our dainty new commissioners of inquiry. I am sure that the first trials for treason will probably miscarry, and that our commissioners, having no extraordinary talents for their province, will require a good deal more assistance than I shall think myself bound to give, or is even useful to the king's service. I am blind with sore eyes, but I hope to be more composed and write more fully next." *

* Sir David Dalrymple went abroad as he proposed in this letter, but was rated for it by some of his countrymen in Scotland. Colonel Cathcart wrote to Stair in September: "All our Scots rebel prisoners, as well those who surrendered themselves [at Preston] as others, are brought to Carlisle, excepting the peers and Lord Huntly, whose pardon seems to be at a stand. The hardship of bringing these poor people into another kingdom to their trial is charged by the *squadrone* on Sir David's going abroad for his diversion." This arbitrary proceeding caused great dissatisfaction in Scotland, and even the English lawyers appointed on the commission for trying

Within a few days of the date of this letter, the king's private secretary, Robethon, informs Stair that M. de Bernsdorff (a Hanoverian much in the royal confidence) had ordered him to say that Lord Stair's uncle, Sir David Dalrymple, was conducting himself in a very strange manner, having spoken in parliament several times with the purpose of rendering the Confiscation Bill entirely ineffectual, and for rendering valid all the conveyances of estates made by the rebels till their openly appearing in rebellion; that Lord Townshend had said lately that Sir David had given him a memorial which, if acted upon, would not have admitted of a single rebel in Scotland being punished, or a single estate confiscated; and M. de Bernsdorff left it to Lord Stair to say if this was proper conduct for a lord Advocate, and if the king could retain in his office a man who on all occasions declared against the Government. Stair was therefore requested to write strongly to Sir David to make him act in concert with and under the direction of the Duke of Roxburgh,* who had his Majesty's confidence in these matters.†

those prisoners taken on Scottish soil hesitated to award capital punishments. The Scottish prisoners of inferior rank taken at Preston, and tried by Commission of Oyer and Terminer at Liverpool, were at least legally, albeit severely, dealt with.

* The Duke of Roxburgh was now Secretary for Scotland in place of the Duke of Montrose who had resigned, having in July 1716 accepted the office of Lord Clerk Register, which in December following he resigned for the office which Roxburgh had held of Keeper of the Great Seal.—Records of the Register House of Edinburgh.

† M. Robethon to the Earl of Stair, June 4, 1716—Stair Papers, vol. vii. Notwithstanding this warning message, the Lord Advocate continued to hold his opinions and also his office till 1720, when he retired. The Solicitor-General, Sir James Stewart, who probably shared the Advocate's sentiments, was in 1717 deprived of his appointment, which was given to Mr Dundas of Arniston.

I shall conclude this chapter with three family letters—from Lord Stair's aunt, Lady Cathcart; from the dowager Countess of Stair; and from the Countess, his wife.*

The Lady Cathcart to the Earl of Stair.†

"CATHCART, *October* 25, 1716.

"I am imprest with the deepest sense of your lordship's friendship to this family, and particularly to my sons; and now that I am unfortunately deprived of my dear James, and your lordship of a grateful dependant, I take leave to beg my grandson, John Whiteford, may succeed him in your lordship's favor. John is mighty fond to be in the military, but Sir Adam, having many children, cannot be brought to purchase for him. Commissions now coming so high, his importunity, with the concern I am in to have him provided, forceth me to give your lordship the trouble of this. My daughter told me that the two countesses of Stair and my Lord President had undertaken in summer last to recommend him to your lordship; so from the experience I have of your lordship's former favours to me and mine, I encourage myself in the hope that your lordship will, 'gin it can be done, remember your friend. He is my favorite, and I hope shall deserve your lordship's countenance. I entreat your lordship will pardon this trouble. My lord offers his most humble duty to your lordship.—I am, &c., ELIZA CATHCART.

* In the appendix to this chapter are several letters of considerable interest from Colonel Cathcart to Lord Stair, as to his army promotion, &c.

† Stair Papers, vol. viii. Lady Cathcart, wife of the seventh Lord Cathcart, was the second daughter of Viscount Stair, and consequently aunt to the ambassador, and sister to the "Bride of Lammermoor."

"To hear from your lordship will be a mighty pleasure to me."

The Countess-dowager of Stair to Major Skeene (at this time agent for Lord Stair in London).

"EDINBURGH, *November* 3, 1716.

"Last post I had yours of the 27th of October, and the president hath adjusted with Colonel Charteris to send up a factory to Mr Middleton* to receive what money you have in your hand, and the whole principal so soon as you can make it. I think there is no loss in selling, because the price is pretty high, but I leave that to you to do as you think most reasonable; and so soon as he [Colonel Charteris] gets his whole principal, he is to deliver up his bond, and upon the receiving his bond the president and I are to give him our obligation for payment of what annual rents shall be found due at this Martinmas. Upon Saturday last the house of Castle Kennedy was burnt, of which I have no account of the way it was done, but only that the maid had put on a fire in the drawing-room for airing the room, and went to bed after she had put out the fire. However, in the night it broke out and burnt all, so as they had much difficulty to make their own escape, and could save nothing but my son's own picture and two more. I know he will be concerned, because Castle Kennedy was the favourite house he had in this country; but we must all submit to the providence of God, and acknowledge His justice that orders all things

* Mr Middleton was a banker in London.

well. And I desire you may transmit this letter to him, and observe his orders."

*The Countess of Stair to the Earl of Stair.**

"EDINBURGH, *November* 1 [1716].

"MY DEAR,—I received yours of the 28th to-day. What you say of your private affairs I shall let your mother and the president know to-night, for I am just going to meet with them. The baron has been in the west for some time, and is not yet returned. He has got a new mistress, Lady Margaret Carmichael, but I cannot think he has much ground to hope, when they have positively refused the Advocate's son.† I must own I have the utmost impatience to know what is resolved on for you. I have comforted myself so much with the thoughts of our meeting soon, that I'm afraid a disappointment will be insupportable. The Jacobites here are much dejected with their accounts of the Pretender. I find they give him for gone, and I believe it will be the better for them if it be so. I beg you will mind my poor friends in Fife; they are a miserable poor family, and depend on you for help. My dearest Life, farewell."

* Stair Papers, vol. xii. This letter is unsigned, but there can be no doubt of its authorship. It is the only letter from Lady Stair to her husband I have met with in the Stair Papers. As the year is not given in the date, I may be wrong in assigning it to 1716 instead of 1715. In 1717 the Countess and her daughter came to reside with the ambassador at Paris.

† Afterwards Sir James Dalrymple of Hailes, Bart., father of Lord Hailes.

APPENDIX

VISCOUNT STAIR

STAIR ANNALS—VISCOUNT STAIR.

APPENDIX TO CHAPTER IV.

LETTERS of SIR ALEX. HUME (resident in London) to his Cousin, LORD ARNISTON, a Judge of the Court of Session in Scotland.

(From the Arniston Collection.)

Sept. 18, 1662.

MY LORD,—I have received yours of the 10th, which is most welcome to me in letting me know your health, though you are pleased to be very sparing in relating public affairs. But that is supplied by others, who are more free of their intelligence, and by the weekly prints, which inform us of most things that pass there. We have heard of a Declaration ordained to be taken by all persons that are already or shall be admitted to any public charge, disowning the "National Covenant" and "League and Covenant" as unlawful, seditious, and not binding, which may chance to give some scruple to some who are not yet sufficiently converted from the persuasion they had of the warrantableness of these. But I hope none of my friends will be of that number, especially that friend of yours and mine [Lord Stair] whom I have formerly mentioned in this subject. I would myself write to him about it, but know not how to

address my letter directly to the place where he lives. You may chance e'er long to meet with him, and tell him, if he will maturely consult his own judgment, I am confident he will not wrong himself by adhering to a cause whereof I am sure he abhors the sad effect. . . . But if it should chance to be otherways, and that he cannot divest himself of his former persuasion, then I shall entreat you to desire him, that without declaring his purpose to any other, he will send me with all speed a resignation of his benefice, that I may endeavour to get it for one who is as near to him as you are to your most affectionate cousin, &c.

A. HUME.

June 9, 1663.

By my last I gave you notice that I was informed that the Declaration would now be more strictly urged than it hath been hitherto. Since that time, I have heard from a very good hand that there will be no connivance nor delay in that matter, but all that are in public charges forthwith put to it, either to take it or to quit, which makes me again write these, to instruct you that you will use all endeavours with our dear friend to make him seriously consult his own judgment and reason, and I am confident he will find that nothing in conscience or honour can oblige him to adhere to that which is by law condemned, or, as I have formerly said, to approve the cause whereof I am sure he abhors the effect. . . .

WESTMINSTER, *Nov.* 3, 1663.

MY LORD,—Yesternight late I received yours of the 26th October, with one enclosed for the Bishop of Dunblane [Leighton], to which, if he hold his promise, you will receive an answer herewith. I had upon my journey much ill weather and bad way, yet, thanks be to God, I got safe hither on Wednesday last, the 18th, without any ill accident, whereof I should have given you notice sooner, but that I

deferred until I might withal let you know the arrival of our great men, whom I expected every day, yet they came not till yesterday about six o'clock. They went immediately to the king, who gave them a very gracious reception, and talked with them both together about an hour or thereby. Upon their withdrawing from the king, I waited upon them at my Lord Lauderdale's lodging in the Court, but forbore at that time to say anything to them concerning you, until I should understand from you upon what terms you left them, whereof your letter that I received afterward did inform me. So this morning early I went to them both, and found Lauderdale newly come out of bed, and Rothes* afterwards still in bed. I spoke to them both very earnestly concerning your business, and Lauderdale told me of the signed paper you had sent with him, wherein both of them have promised at the very first opportunity to speak jointly with the king—this night, if it be possible—but seem both of them to have small confidence of the success, the king having absolutely refused to accept my Lord Crawford's subscription with any manner of qualification, but punctually as the words lye. Upon this answer from them I went and found out the Bishop of Dunblane, and having given him your letter, spoke at great length with him of the thing, and found him, as you described him, very much inclined to moderation and against all rigid courses, but without any hope that the king can be moved to dispense in any sort with the Act made in that behalf; and for his speaking with the king in it, he declines it altogether, having seldom or never, as he sayth, taken the freedom to speak with the king in any business, and rarely made any other address to him but to kiss his hands at coming or going. All that he thinks proper for him to do is to speak with Rothes and Lauderdale, and endeavour all he can, either by his advice for moderation in general, or by recommending your person and Lord Stair in particular, to dispose them to

* The Earl of Rothes had now replaced Lord Middleton as Royal Commissioner, the Earl of Lauderdale continuing Secretary for Scotland.

be earnest with the king for procuring an exemption to you both from the Act, and to this purpose he sayth he will make all the haste he can to see them as soon as he can possibly absent himself for an hour's time from his brother, who is at present lying sick of a fever and flux in great extremity. In his discourse to me he said one thing which to me seemed very rational, that he thought the qualification you desire to insert (of disowning the particulars there mentioned in so far as they were against law, and disclaiming all endeavours that may lead to the disturbance of the public peace) is altogether superfluous, seeing the meaning of the Declaration can be in effect no other, and no actings can be understood to be thereby disowned but such as were against law, nor any endeavours disclaimed but such as are seditious, which, if you will take into serious consideration, together with what I have formerly urged when we were together, and consult your own judgment maturely in it, I do yet hope that you may overcome your scruples, and subscribe the Declaration simply as it stands, without addition of that postscript, though you may at the subscribing of it by mouth declare the sense in which you think it is to be understood, which doubtless will be equivalent as if you should put it in writing. . . . You will please to present my best respects and service to your noble lady and children and son-in-law. I believe my Lord Register's coming to Court at this time is very uncertain.

WESTMINSTER, *Nov.* 5, 1663.

I writ to you on Tuesday, the 3d hereof, with one enclosed from the Bishop of Dunblane, since which time I have continually watched when our great lords should have access to the king, which did not occur till this afternoon. At their going in I put them in mind to speak of your business, which they both promised. At their coming out I waited upon them again, and they told me that all the time they had been in private with the king (which was about two hours) had been spent for the most part in giving

the king account of his several instructions during the late Parliament, and of what they had done in obedience to his commands. When at last they began to speak concerning you and my Lord Stair, with the best character of your persons that might be, and when they were about to propound your offer of a qualified declaration, and my Lord Lauderdale was ready to show him your paper—the king being, as it seems, wearied out with so long a discourse, and his coach being ready to carry him abroad to see the Queen-mother—the time of the day being late, the king broke off, and desired them to leave that business till some other occasion, which they say they will watch for to-morrow, or as soon as possibly they can.

LONDON, *Nov.* [*should be Dec.*] 8, 1663.

I forbore to answer yours of the 26th of November, expecting daily to understand the king's determination touching your business, which I did not till within this minute that I went to enquire of my Lord Lauderdale whether he had any answer, who told me he had very lately spoke at length with the king about it, and used all arguments imaginable to induce the king to consent to your desire, but could not prevail. He showed me a letter that he hath written to you, where you will find his Majesty's final determination, with the reasons of it, and withal, the counsel he gives you to consider well before you quit your station; to which I must add that you will consider so well as not to quit it for a mere punctilio of form, for certainly, in point of reason and conscience, there can be no difference between the writing of that explanation you desire to subjoin, or speaking the same words at your subscribing of the declaration. One thing, I must confess, is more than I expected, that when the Act of Parliament appoints the 11th of November for all members of Session to subscribe it—and failing at that day, advantage might have been taken against you and other recusants, and their places immediately disposed of—his Majesty is so gracious as yet to

admit you if you will at last comply with the law; which, if you do not, it will please all such as bear you no goodwill, and afflict all those who love and honour you, and no man more than him who is faithfully, &c.

(*Extract.*)

LONDON, *Dec.* 29, 1663.

. . . I assure you the king's resolution continues to admit no others to be lords of the Session but such as have been bred lawyers; and our great men here, as I am told, profess they will not take upon them to recommend any but such as shall have the approbation of the lord President, who is to answer for their qualification, and particularly that they shall be such as may be capable, the very next day after their admission, to sit in the Outer House. By this you see how impossible it is for you to have the succession you desire, especially he being at this present in such a condition as he cannot be able to speak with the king in any time before that matter will be at a point. So, if that consideration may be of any weight, you may assure yourself it is as I tell you. As for your conscience, God forbid that I should wish you to hurt it; but in a matter of that weight it is fit to examine the matter well before you do that which may bring a thousand bad consequences upon you and your relations. . . .

I had forgot that which you writ of the advice was given my Lord Stair to send a demission, if he could not resolve to take the declaration. You may also, in that case, do the like without taking notice of that you sent to me. But I will still hope better of you both, as I am this day told that my Lord Rothes hath fresh advertisement from Scotland that both of you will be brought to take it with verbal explanations, which, I beseech God, may be true.

LONDON, *May* 28, 1664 (*Saturday*).

MY LORD,—These are only to let you know that your friend [Stair] is returned hither, to whom I have given your

letter that was under your cover to me of the 21st April. He tells me he hath also had two others of yours of later dates. He came hither but two nights ago, and hath his despatch to his satisfaction for what concerns himself, nor is he unmindful of his friend's interest, whereof he makes no doubt to bring a good account, though he hath not yet fully concerted with L. [Lauderdale] of the manner of doing it. He is gone this morning with him to his country house, where they are to confer at length, and at his return hither on Monday I suppose he will let me know the result, and Tuesday he proposes to set forward towards Scotland.

LONDON, *Last of May*, 1664.

I writ to you on Saturday the 28th hereof, and have little more to add but that your friend having been at Highgate with L. two days ago, came hither yesternight, and tells me he hath had a full conference touching your business, which is now brought to that point that it will depend upon yourself if you think fit to go the same way that your friend hath done, the particulars whereof must be remitted to his relation when you meet with him, which I suppose will be within few days after your receipt hereof, he being, as I think, to part from here to-morrow, and to go post in company with my Lord of Argyle. The reason why he could not bring with him the like despatch for you and for himself you will understand by him.

WESTMINSTER, *June* 23, 1664.

Just now I receive yours of the 16th, and am very sorry that you give me so little hope of that which you know I so much wish. I have already said as much upon this subject as I could, and have nothing now to add, but that I cannot comprehend how you should be more difficult to receive satisfaction in your scruples than your friend who hath hitherto been of one mind with you. I doubt not but he

hath fully acquainted you with his proceedings, and upon what grounds he hath been moved to comply, which I conceive was a conference he had with the king, who being the party chiefly concerned had power to declare in what sense he would allow the thing to be done. For God's sake consider seriously whether you might not in the same way be set free, and if so I could wish that you should of purpose make a journey hither to receive the same satisfaction in the point that your friend did. And in any case I think your journey would be useful to let his Majesty know that your scruples do not proceed from any bad cause, but merely conscience.

WESTMINSTER, *Aug.* 9, 1664.

MY LORD,—I have received yours of the 30th of July, whereby you have now cleared me more than I wished of your purpose, whereof I have often written, and with so much impatience expected your answer. And I must withal confess to you I am far disappointed of my hope in that matter. For having very justly heretofore, from the former difference of your judgment and principles from your friend's, collected that more might be expected from you than from him, I cannot comprehend upon what ground it can be that you now fall short of the length he comes; nor will I urge to know it, seeing it may not be without divulging your friend's secret, whereof it is not fit for me to be inquisitive. But as to that which you say (viz., that the Paper being so much against your sense and his, you thought it unreasonable that the signing of it should be public and the salvo should be latent), give me leave to remember you of what you have often professed, that no consideration did hinder you to do it, but merely point of conscience; and if so, what need there should be to have the salvo public is more than I can understand. But this or anything else that I can say I doubt will be to little purpose, seeing that worthy person can neither with his persuasion nor his example prevail with you. And therefore I

shall forbear further contending with your resolution; only, as the last means, I shall entreat you to peruse two little books which I have sent you by our cousin Wedderburn, and if they don't convert you I shall despair of it.

As for the king's inclination touching the laws enacted by the parliament in order to conformity I am not able further to inform you than I have often said, that I know he is not of a nature to use severity with any man in point of tender conscience; but how far he may be disposed to grant any indulgence or dispensation from the obedience to those laws is more than I know. Your friend may possibly know more than I, having at his being here intimately conversed with my Lord Lauderdale, who is best able to inform him. And now that I name that lord, I must let you know, that of late having occasion to speak with him, he told me he was sorry to hear you was not like to comply, and wished me to use all possible means to persuade you to it, promising to keep the door open for you as long as he could; and indeed I see no great haste is made to dispose of any of the vacant places, nor do I hear whom they mean to put in them. . . .

A. HUME.

The Earl of Glencairne (Chancellor of Scotland) to Lord Arniston.

EDINBURGH, *Jan.* 5, 1664.

MY LORD,—The King's majesty having by letter under his royal hand and seal of the 19th of December last, directed to the Lord Chancellor, and by his lordship this day presented before the lords of Session, required us to appoint a short day on which the absent lords of the Session may either subscribe the Declaration concerning the Covenant or refuse it, to the end his Majesty may take care for supplying the places of such as upon that account shall forsake their station, and that the lords of Session declare the

places of the refusers void; in obedience of his Majesty's commands we have assigned the 8th of January instant for your lordship to come in and give your positive answer either as to the subscribing or refusing the Declaration aforesaid, and do therefore in his Majesty's name require your lordship to come in precisely that day for that end, &c.

And this the lords of Session have appointed to be signified in their name unto you by

Your lordship's affectionate friend,

GLENCAIRNE.

Lord Arniston to the Lord Chancellor.

ARNISTON, *Jan.* 7, 1664.

MAY IT PLEASE YOUR LORDSHIP,—I did some weeks ago send a demission of my place in the Session to the Court, which I hope before this time is presented to the king's most sacred Majesty, whereby I am altogether incapacitated to give obedience to the lords of Session their commands laid upon me as one of their number by their letter of the 5th of this inst., signed by your lordship in their name. This I hope will excuse me for not waiting upon their lordships on Friday next according to their appointment; and I shall entreat their lordships may believe that though I shall no more be able to serve them as a public minister, I shall never omit any thing shall be in my power as a private man whereby I may witness the deep sense I have of their lordships' civility and kindness to me while I had the honour to sit amongst them, which can never be forgotten by,

My Lord,

Your Lordship's most humble servant,

JAMES DUNDAS.

Letters, Lord President Stair to the Duke of Lauderdale.

[*Backed in the handwriting of the Duchess of Lauderdale*—Lord President desires salary to George Scott for his having taken pains to collect old charters and deeds.]

MAY IT PLEASE YOUR GRACE,—The lords of the Session having received a petition from Mr George Scott of Pitlochie, bearer hereof, representing that his deceased father, Sir John Scott of Scotstarvet, director of the Chancellarie, having with great pains collected and written with his own hands in certain books an abbreviate of all charters past the Great Seal for the space of two hundred years or thereby, beginning (*i.e.* the Abbreviate) in the year 1656, expressing therein the lands, *tenendas* and *reddendos*, and the most considerable provisions in the charters; and desiring that the lords would take inspection of these books and consider of what use they might be to the lieges, and to take some course of disposing of them as they should judge fit, and that consideration might be had of the said Mr George his care in preserving the same: and the lords, after the perusal of these books by some of their number, finding, upon their report, that if they should be divulged now after the loss of so many of the public registers, use might be made of these to bad purposes,—the lords have ordered the books to be sealed, and to be kept by one of the clerks until they consider further thereof. And in regard of the said Mr George his care in preserving these books, and that he has not consulted his own advantage in making them patent and forthcoming to private persons for serving their sinistrous and covetous designs (whereunto he wanted not inducements), and which might have proven of dangerous consequence, but has freely and ingenuously made offer of them to the said lords to be disposed of as might most conduce to the public good,—the lords have laid their commands upon me to desire your Grace to represent the case of the said Mr George Scott favourably to his

Majesty, and to interpose that his Majesty may be graciously pleased to allow him a gratification suitable to his care and ingenuity in this affair.—I am, &c.

EDINBURGH, *5th March*, 1678.

To his Grace the Duke of Lauderdale,

These.

MAY IT PLEASE YOUR GRACE,—The laird of Robertland, younger, being to go to London to look after some concerns of that family committed to the trust of Sir James Cunninghame his uncle, is to wait upon your Grace and to offer you his service, which he has long intended, as Master Forester knows, but was retarded by the importunity of some of his allies, to whom he gives no thanks, and bids me assure your Grace of his faithful friendship and service. I doubt not but your Grace (who has been always ready to show kindness to your countrymen) will countenance and favour him in his just intentions, which is all that is desired by

Your Grace's most faithful, &c.

JA. DALRYMPLE.

[*Date probably between* 1672 *and* 1680.]

APPENDIX TO CHAPTER VII.

Test Oath, stat. 1681, c. 6.

"I, A. B., solemnly swear in presence of the Eternal God, whom I invocate as Judge and Witness of my sincere intention of this my oath, that I own and sincerely profess the true Protestant religion, contained in the Confession of Faith, recorded in the first parliament of K. James VI.; and that I believe the same to be founded on and agreeable to the written word of God. And I promise and swear that I shall adhere thereto during all the days of my lifetime, and shall endeavour to educate my children therein; and shall never consent to any change or alteration contrary thereto: and that I disown and renounce all such principles, doctrines or practices, whether Popish or phanatical, which are contrary unto and inconsistent with the said Protestant religion and Confession of Faith. And for testification of my obedience to my most gracious sovereign Charles II., I do affirm and swear by this my solemn oath that the king's Majesty is the only supreme governor of this realm, over all persons, and in all causes, as well ecclesiastical as civil; and that no foreign prince, person, pope, prelate, state or potentate hath or ought to have any jurisdiction, power, superiority, pre-eminency or authority ecclesiastical or civil within this realm. And therefore I do utterly renounce and forsake all foreign jurisdictions, powers, superiorities and authorities, and do promise that from henceforth I shall bear faith and true allegiance to the king's Majesty, his heirs and lawful successors, and to my power shall assist and defend all rights, jurisdiction, prerogatives, privileges,

pre-eminencies and authorities belonging to the king's Majesty, his heirs and lawful successors; and I further affirm and swear by this my solemn oath that I judge it unlawful for subjects, upon pretence of reformation or any other pretence whatever, to enter into covenants or leagues, or to convocate, conveen or assemble in any councils, conventions, or assemblies, to treat, consult, or determine in any matter of state, civil or ecclesiastic, without his Majesty's special command or express licence had thereto; or to take up arms against the king or those commissionated by him; and that I shall never rise in arms or enter into such covenants or assemblies. And that there lies no obligation on me from the National Covenant, or the Solemn League and Covenant (so commonly called), or any other manner of way whatsoever, to endeavour any change or alteration in the government, either in Church or State, as it is now established by the laws of this kingdom. And I promise and swear that I shall with my utmost power defend, assist, and maintain his Majesty's jurisdiction foresaid against all deadly;* and I shall never decline his Majesty's power and jurisdictions, as I shall answer to God. And, finally, I affirm and swear that this my solemn oath is given in the plain, genuine sense and meaning of the words, without any equivocation, mental reservation, or any manner of evasion whatever; and that I shall not accept or use any dispensation from any creature whatsoever. So help me God."

An Apology for Sir James Dalrymple of Stair, President of the Session, by Himself.

Self-defence is one of the first and most evident principles of the light of nature. Revelation hath made it yet more evident that we not only may, but must, defend our lives and fame against all invasions thereon; for these are

* "All deadly" is the translation in old Scottish instruments of the law Latin "omnes mortales."

not in our power that we may take them away, or suffer them to be taken away, except in the way of justice, but they are entrusted to us by God to be defended in all lawful ways we can. Assassination against men's lives is a most cruel crime, striking at the very root of human society and safety, being so sudden and unexpected as it cannot be prevented and hardly evited. Yet it is more difficult to prevent or evite an assassination of fame; for an assassin of life can much more easily be found out and punished than an assassin of fame, who, by anonymous and infamous libels, may much more securely wound the reputation than the body;—and therefore defamation, especially by infamous libels, is, by the law of the Romans and all other civil nations, accounted and punished as a most atrocious crime. Infamous words cannot be so easily propagated and continued as infamous libels. *Litera scripta manet.*

I hope no just person will blame me for vindicating my fame and reputation from the false and calumnious aspersions wherewith I am endeavoured to be branded, with the most vehement virulence, in an anonymous pamphlet entitled 'The late Proceedings and Votes of the Parliament of Scotland, contained in an Address delivered to the King, signed by the Plurality of the Members thereof, Stated and Vindicated.'

This pamphlet bears to be printed at Glasgow, which is false; for it was printed at London, as the tenor of it importeth, speaking of things done at London as done here, which could not be sense applied to Glasgow or to Scotland, but to London. It doth contain a rhapsody of false and ignorant aspersions and reproaches against the king and all he had then entrusted in his service; yet malice or avarice had prevailed to have another impression at Edinburgh (for all satires sell well), if it had not been discovered and hindered by the Privy Council, whereupon the printer was imprisoned, and a committee of the council appointed to consider the same in order to a censure; but the Parliament approaching, the vindication of the king and the censure of the authors and spreaders of this infamous libel

will be most proper there, the expectation whereof hath made several answers to it, ready for the press, to be forborne.

But seeing it is most venomous against me, though at first I did neglect and contemn it, *nam spreta vilescunt;* yet finding that it is industriously spread and most aggravated against me, and commentaries made upon the general aspersions in it, I judged it my duty to apologise for myself, lest those that know no better might think I was self-condemned and could not answer, being conscious of the guilt I was charged with.

The sum of all that is charged against me is, that I have been a changeling, appearing at first against tyranny and arbitrary government in the reign of King Charles I., and then turning for the same things in the reign of King Charles II., and all under the mask of religion; and having betrayed my country in accepting to be president of the Session upon the king's nomination, contrary to the act of parliament by which the president of the session is to be chosen by the lords; and that I was concurring in all the evil things were done during the Duke of Lauderdale's ministry against the suffering Presbyterians for their conscience, as being either author of, assistant in, or ready to justify these actings, and so no man was more stained and dyed with blood and oppression than I; and that the Rev. Mr Robert Douglas did threaten or foretell judgment to me and my family; and that the decisions of the lords of Session which I have published are as obscure as the oracles of Delphos.

I do not intend to make panegyrics in my own praise, but only plainly and ingenuously to declare the matter of fact as in the sight of God, who only is judge of the heart, and knoweth entirely who are hypocrites acting under the mask of religion, and who are not; yet this libeller is so bold as to conclude me an hypocrite acting under the mask of religion, which he cannot know, and yet he doth confess that I did begin to act for liberty and in a way that ap-

peared to be religious. And he can as little know what I was the author of, when I was not the actor, and far less what I was ready to justify, unless he had shown that I had justified that which was wicked, which his general aspersions of concourse can never do, unless he had been a witness himself, in which case his malice would not have rested in generals, which are ever accounted calumnious, but would have been particular at least in some eminent acts; and yet there is but one particular against me in all his bitter libel —to wit, that I accepted to be president of the Session on the king's nomination, which, upon his own assertion only, he pretends to be the betraying of the nation; but whether it be groundless or not will appear by what follows.

This also is obvious, that all his malice hath not prevailed with him to asperse me with anything that concerns my special trust as a senator of the college of justice, wherein I continued more than ten years, or as president of it, wherein I continued above ten years more; and, if he be not ignorant of Scottish affairs, cannot but know that after the parliament 1681, wherein, being a member, I was forward for the preservation of the Protestant religion and for preventing the incoming of Popery in the view of a Popish successor; and in the public debate of parliament my reasons prevailed to exclude all from public trust who did not swear to maintain the Protestant religion according to the Confession of Faith of the Church of Scotland, made at the time of the Reformation, approven and recorded in parliament, without leaving it to the indefinite name of the Protestant religion; while the then Duke of York did, the very night that act passed, declare to the late Earl of Argyle that I had ruined all honest men (meaning Papists) by bringing in that confession, as Argyle's case, published by himself in print, beareth; whereupon there was immediately a commission to the lords of Session, leaving me out, without the least pretence of reason or any order of law, but against the known law of the kingdom, whereby the lords of Session have their place *ad vitam aut*

culpam, which is the great security of the people that their judges are not under temptation to be overruled by fear of being thrown out at pleasure. That quarrel, with my freedom to the then duke at his first coming to Scotland against attempting to weaken the Protestant interest, in a public speech I had at his entry, made me to be the first person laid aside that ever was looked after. I was cited before the criminal judges, before the council, before the parliament, and hundreds of examinations and re-examinations were taken against me, even of my most intimate domestic servants and my sisters-in-law, not in the regular way for probation, but by way of inquisition to found a process upon any special matter; which was never done, because nothing was found against law. Can any judge in Christendom show such a trial of integrity, who did so long a time serve in such an eminent station? No man was found to witness the least malversation or baseness by indirect interest in any cause, by taking any bribe or reward, by partiality or insolency, though nothing would have been more acceptable to the court than by one blow against my fortune and fame to have ruined me upon malversation in my trust as a judge. It is a further evidence of my integrity that, though I have been forty years in public employment, yet I have not bought an hundred pounds sterling of rent more than I have sold; and when my sons came to the House,* I did most strictly prohibit them to solicit me in any case, which they did exactly observe, and may safely declare it upon their oaths; and it is known to many others that there might be no suspicion of their taking anything on my account, but only what was proper for those of their station. Yet it is highly aggraged [*sic*] in this pamphlet that the king restored me to be president of the Session in the same terms I was at first, my pension not being the half of what was given since I was removed, though my former pension bore to be during my natural life, and though I had cheerfully adventured

* The house in Edinburgh where the Court of Session then sat.

not only my life and fortune but the ruin of my children with the king in his expedition to Britain in the winter season, in the seventieth year of my age, with all the cheerfulness imaginable, which made his Majesty express so much kindness to me and tenderness of me as did presently breed me no small measure of envy.

To return, then, to my charge of being a changeling. I was ever fully persuaded, since I came to ripeness of age, of the truth of the Protestant religion, and of the constitution and government of my mother church, and Prelacy reformed from Popery, though prudence allowed me not at all times to make noise, whereof yet I never changed my opinion till this day, but did show the same, both in my practice and profession, to those I might use freedom with, and never disowned it, or owned the contrary, to any mortal; but my judgment and inclination never led me to use or approve severity against those who suffered for serving God in the way they were persuaded, without idolatry or overturning the principles of religion necessary for holiness and happiness. So far I was from being the author or justifier of the severities used against those of my own persuasion, of whom many are my witnesses that I did what I durst to save them, and I was always so esteemed and often publicly reproached in council for so doing. I did never meddle in any criminal court, nor was I ever judge, pleader, juror, or witness therein, and in the Council I did frequently declare my judgment that though in other courts the judges were obliged to follow the law, although rigorous, yet the council, to whom the policy and government of the nation is committed by the king, was not bound so to apply the severities of the law, but as they judged it as well prudent as just. I did often publicly declare my judgment against a letter procured from King Charles II. making the capital and criminal punishments in relation to ecclesiastic affairs to extend only to arbitrary pains and penalties, that thereupon persons accused might be holden as confessed, seeing I ever judged that no man

is obliged to confess that which is not otherwise proven against his life or fame. I did also oppose the enervating of all our judicatories, upon pretence of accumulated power, and the encroachment upon the privilege of the royal burghs in the parliament 1681. Let, then, my unfriends be my judges if it be a just assertion or inference that none was more stained with blood and oppression than I. My opposition to the course of the times doth appear by the Narrative of the Plot, approven in the Parliament 1685 (c. 30).*

As to the matter of civil government, since I was capable to consider the same, I have been ever persuaded that it was both against the interest and duty of kings to use arbitrary government; that both king and subjects had their titles and rights by law, and that an equal balance of prerogative and liberty was necessary for the happiness of a commonwealth. I have fully expressed my judgment therein in a treatise which (when published) I hope will not be unacceptable to so gracious and moderate a prince as we now have, nor to the people.† I never gave another impression to any of our kings, whereof I trust our present king will bear me witness; and though some have been suspicious that I have given ill characters of them, or hindered them from such places or preferments as they aimed at, yet he knows that at home and abroad I have given favourable characters of many, but evil characters of none. Not that I was afraid freely to tell him the truth, if he had required it; but he did not,—for he had abundance of that stuff from other hands, and much more than was acceptable to him.

* The narrative here referred to is probably the pamphlet entitled 'A true and plain Account of the Discoveries made in Scotland of the late Conspiracies against his Majesty and the Government: extracted from the Proofs lying in the Records of his Majesty's Privy Council and the High Justice Court of the Nation. Edinburgh, 1685.' In two if not more passages of this pamphlet, Stair's name is introduced amongst the leaders of the "fanatical" party opposed to the Government—"Argyle, Sir John Cochrane, the Earl of Tarras, Saltoun, Philiphaugh, Stairs, Gallowshiels, and others of that crew."

† This treatise never appeared.

To show how little I have been a changeling or time-server, it is commonly known, and there are hundreds can witness, that I was excluded from the bar for not taking the Usurper's tender, engaging to be faithful to the commonwealth of England without king or house of Lords, and never appeared again till that tender was laid aside; and though thereafter I was made a judge—supposing I would be as acceptable to the nation as any—yet I did not embrace it without the approbation of the most eminent of our ministers that were then alive, who did wisely and justly distinguish between the commissions granted by usurpers, which did relate only to the people, and which were no less necessary than if they had prohibited baking or brewing but by their warrant, and between these which relate to councils for establishing the usurped power or burdening the people; and therefore, though I was much invited, I never embraced a commission to any of their pretended parliaments or councils of state; and I know that the king allowed his friends to accept such commissions as were necessary for preserving his people, and therefore, when he was restored, I was one of the senators of the College of justice in the first nomination. But when the Declaration was enacted by parliament, required of all in public trust, I did rather renounce my place than take it, and did retire unto the country, where I lived a year privately and quietly; but without my desire or expectation, King Charles called me to London, and desired me to return to my station in the Session. And when I told him I could not sign the Declaration unless it were so explicated and restricted that by the general terms expressed in it I did declare against no more than what was opposite to his Majesty's just right and prerogative, and that I should have these terms from his Majesty in writing, which he granted and I have yet to show, and which the act of sederunt at my restitution doth import. And in the third place, when the late test was enacted in the parliament 1681, though I was well pleased with the first part of it, which was the safest hedge against

Papists that ever I saw, yet I could not sign the latter part of it; and though it was not required to be signed till January thereafter, yet many were so zealous as to subscribe it within a few days after the parliament. I did therefore go up to the king, to show him that I could not take that test, and to desire liberty, with his favour, to retire; but before I came, the new commission for the Session, wherein I was left out, was passed, so that I had no further to say. And therefore I neither did resign nor was excluded by the act of the test (seeing the day was not come), but by mere arbitrary power. Whereupon I did retire to a private life, and with assurance not to be disquieted therein; but when I found I was in continual suspicion, and that my tenants were thrown in prison, and forced to give bonds on pretence of conventicles for more than they were worth, and that my rents were arrested, I did ask the advice of the then king's Advocate [Sir G. Mackenzie] whether he thought I might be safe and free of imprisonment. He told me faithfully and friendly that he thought not, and owned to the king that he had so advised me; whereupon I was necessitated to retire unto Holland, the place of the greatest common safety; and yet there were frequent addresses to the Prince and States to remove me out of their provinces. And after I was gone, my eldest son was fined in £500 sterling upon Claverhouse's pickish accusation that, as Bailie of the regality of Glenluce, he had fined too low for conventicles; and thereafter he was taken summarily, without citation, and brought to the Tolbooth [prison] of Edinburgh, as if he had been a malefactor, and detained three months, and then let go upon bond of confinement, without showing the least pretence of a cause, though he had never meddled in any public matter, but had served in good reputation and employment as an advocate. Let my enemies, then, show how many they can instance in the nation that did thrice forsake their station, though both honourable and lucrative, rather than comply with the corruption of the time, or sign any thing wherein they had not clearness of conscience, as I

have done, who quitted my station for the Usurper's Tender, and for the Declaration, and Test. It is true, many were free of all these; but few deserted such stations as I was in for them all. If these be consistent with being a Proteus or a changeling, I leave it unto any just person of judgment or discretion to judge.

As to the pretence of my subserviency to the Duke of Lauderdale, during his ministry, in the evil things then done, beside that it is general and calumnious without an instance given, and that it may be charged against all that were in the Government during the most part of the reign of King Charles II., it may be redargued by clear instances and evidences in the contrary. I shall not load the memory of the Duke of Lauderdale, who was most zealous for the honour of his country, but was overruled by measures laid before he came to his greatness, and by the difficulties he came to be in upon the account of his favouring those called phanatics. He came to Scotland in the year 1677, and upon the representations made by me and others, he concurred in making several acts of Council correctory of the abuses that then run, as particularly, that persons were cited for Church disorders without special circumstances of time or place; but generally in one or other of the days of all the months for several years, and were put to their oaths upon the whole libel, whereby many had been holden as confessed, and thereupon fined, imprisoned and transported, like slaves, to foreign plantations. Whereupon the then Archbishop of St Andrews did represent to the bishops in England and to the court that he (Lauderdale) was overturning the settlement of this nation; and he likewise said that in one month after he came hither he had put the king's interest further back than could be retrieved in seven years. To make up which he was instigated to bring in the Highland host upon the West of Scotland, who treated them as enemies not only by free quarter but by all insolencies and oppressions, and to obtain an order of Council to enjoin a bond to be taken by all in public trust and

others in that country to delete, apprehend, and bring to judgment all the Presbyterian ministers that came ever in their power that had kept any conventicles; against both which I did with all freedom and faithfulness dissuade him and dissent; and I do not remember of any one person in Council or Session that could never be induced to subscribe that bond or to approve that road but myself; and when in the year 1679 several complaints were made to King Charles against Lauderdale and his brother which were published in print, and whereupon King Charles gave a public audience, though I was there present, there was not the least insinuation against me.

As to the pretended obscurity of the decisions of the Lords, published by me, it is like the ignorance of law of this libeller made them so to him; but I may say without vanity that no man did so much to make the law of this kingdom known and constant as I have done, that not only bred lawyers, but generally the nobility and gentry of the nation might know their rights; for I did carefully and faithfully observe the debates and decisions of the lords of Session during all the time I was in it, expressing mainly the reasons that the Lords laid hold on in all important cases, which were not come to be incontroverted as a beaten path or were obvious to common capacities; and I did seldom eat or drink and scarcely ever slept before I perused the informations that passed every sederunt day, and set down the decisions of the Lords (though sometimes not in the same terms as they were marked by the clerks, for at that time the interlocutors [decrees] were all upon their trust without being revised and signed by the president as now they are) while they were fresh in my memory, which were published in two volumes after my removal; but not being present at the time they were printed, there are many escapes in printing, but seldom is there any of the sense unclear. And I did write the Institutions of the Law of Scotland, and did derive it from that common law that rules the world, and compared it with the Laws civil

and canon and with the Customs of the neighbouring nations, which hath been so acceptable that few considerable families of the nation wanted the same, and I have seen them a-vending both in England and Holland. I was also the first author and prime promoter of that order of bringing in processes for every person, without exception, as they were ready, that the greatest man of the nation could not have preference before the meanest, and that all might be free of uncertain attendance; whereas before all depended upon the arbitrary calling of the Lords as they pleased, so that every judge might call his own friends in his own week.*

I have been quarrelled for being the author of the banishing the advocates from Edinburgh in the year 1674 in the harvest vacance, which is taken notice of in the "Grievances" as an encroachment upon them done by the then Privy Council, whereof I was altogether free; for it was done in the vacant time when I was in the country, and the inspection of the sederunts of the Council will demonstrate that in that whole vacance I was not present, yea seldom was I present in any vacance, and ofttimes absent in Session time, especially when the affairs of the Session required afternoon meetings. God knows I had no pleasure in the affairs that were then most agitated in council.

As to the pretended prediction of Mr Douglas nothing can be more false and calumnious. It is known to many that Mr Douglas did always express the greatest kindness and respect for me to his dying day; and his relict (who is a virtuous and pious person of a good family, and lived long with him) hath testified the contrary and offered to declare the same in the most solemn way could be required, and that he never spoke any thing to the prejudice of me or my family.

Remains now the only special matter charged against

* The motive assigned by Lord Stair for this old custom of the arbitrary calling of causes, will remind the reader of the anecdote attributing the impartiality of Cromwell's judges to their being "kinless loons."

me, to wit, the acceptance to be president of the Session by the king's nomination, not being elected by the lords of Session. As to which I shall give a plain and true account of the election of the President of the Session from the institution of the College of Justice till this time. 1. It is evident by the institution of the College of Justice that the president of the Session was to be constant president and not ambulatory or changeable, and was to be chosen by the king, which was suitable to his royal authority, to which the judicial and executive power is most proper, and so the nomination of all judges. It did so continue without controversy till the year 1579, when there was a correctory law made by the 93d Act of the 6th parliament of King James VI. (after the demission of the Earl of Morton's regency and that the king had not passed his pupillarity, being born in June 1566), bearing expressly that the king elected young men without gravity, knowledge, and experience, not having sufficient living of their own, upon the Session, and therefore contrary qualifications were prescribed, and it was enacted that all entrants should be sufficiently tried and examined by a number of the ordinary lords; and in case that the person presented by the king were not found so qualified by them, it should be leisom [lawful] to the Lords to refuse the person presented to them; and it is declared that the President shall be chosen by the whole Lords, of the condition and qualifications above written, whether he be of the spiritual or temporal estate, dispensing with that part of the institution of the College of Justice bearing that the President should be of the spiritual estate. At this time Baillie of Proven was president of the Session, and continued so till the year 1593. By this correctory act the presentation or nomination of the lords belongeth to the king, and the lords have power to admit or refuse as the person nominated were found qualified or unqualified.

After President Baillie's death in the year 1593, the lords listed the Lords Urquhart and Menmoor, and of that list choosed Urquhart to be president. He continued till

the year 1605 and then was made chancellor, and Secretary Elphinstone succeeded him. He continued till the year 1609, and then President Preston was admitted; and after his death the Lord Binning (afterwards Earl of Haddington) was president and so continued till the death of King James. When King Charles I. came to the crown, Haddington was made Privy Seal, and Sir James Skene was by the king presented to be president, who died in the year 1633, but the manner of election of these four presidents doth not appear, not being extant in the books of sederunt. Upon the 1st of November 1633 Sir Robert Spottiswood was elected president, upon King Charles's letter to the lords bearing that as his father and himself were wont to do in the like cases, he did recommend the said Sir Robert to be president. So that by this letter of King Charles it doth appear that whatever be the sense of that correctory law anent the way and manner of electing the president by the lords, yet that thereafter both King James and King Charles did recommend the person who was admitted president by them. President Spottiswood continued president till the troubles, and then in the rescinded parliaments there was an act ordaining the officers of state, councillors, and lords of session, to be named by the parliament, but there was no mention of the election of the president; yet though the former Acts anent the election of a constant president were not repealed, the lords did name their president every session.

But at the restoration of King Charles II., by the second Act of his first parliament *in anno* 1661, it is declared, that it is an inherent privilege of the crown and an undoubted part of the royal prerogative of the kings of this kingdom to have the sole choice and appointment of the officers of state and privy councillors and the nomination of the lords of Session as in former times preceding the year 1637. And by the 11th Act of the same parliament the acknowledgment of the king's prerogative doth resume the former act in these terms: "Declaring that it is an inherent privilege

of the crown and an undoubted part of the royal prerogative of the kings of this kingdom to have the sole choice and appointment of the officers of state, privy councillors, and lords of session;" which explains that by the nomination of the lords of Session in the former act is not meant the presentation only, but the sole choice and appointment of them, who being qualified according to the laws cannot be rejected or refused to be admitted. According to that and other acts, the king, by his letter recorded in Parliament, gives thanks to the Estates for asserting his prerogative and declares that accordingly he had named his officers of state, councillors, and the lords of session. In which nomination (being of the same date with his Majesty's letter foresaid to the parliament, and which letter was presented in the parliament February 27, 1661, the same day that the act asserting and acknowledging his Majesty's prerogative did pass) Sir John Gilmour was appointed president, and without any formality of list, choosing, trial, or admission by the lords, continued constant president till upon his indisposition he resigned; and upon his resignation King Charles named me to be constant president, and I was accordingly admitted by the Lords unanimously by their act of sederunt, January 13, 1671 (which confutes the impudence and falsehood of the libeller's proposition that I was the first that came to be constituted president by the king, and illegally obtruded upon the lords of session without being either chosen or approven by them), and so continued till September 1681, when by a new commission to the Session I was left out and Sir George Gordon of Haddo was therein nominated constant president without any consent or choice of the lords; and after he was made chancellor, Sir David Falconer of Newton, and after his death Sir George Lockhart of Carnwath, were by the king's letters named presidents and admitted in the same manner as I was; and from King Charles's return till this last session of parliament, there was never the least scruple, motion, or question of any further requisite for the legal

establishment of the president of Session; albeit in the year 1674 much dislike was vented and parties stated against the Session. And it is strange that the eminentest lawyers that ever were of the nation could have been so incircumspect as not to have a legal establishment of their title. So that it is plain that the parliament 1661 was of the opinion of King Charles I. that it was the king's right, and that they had been in use to name, present, and recommend as well the president as the other lords of session. And to conclude this period, I cannot omit to take notice of the ignorance of the libeller, who asserts that all the presidents since 1579 till the year 1661 were the Lords Proven, Urquhart, Curriehill, Sir Robert Spottiswood, and Lord Durie, though it be known to the least intelligent that the Lord Balmerino, secretary Preston of Pennycuick, Collector-general, and the Lord Binning, Secretary, afterwards Earl of Haddington, were successively presidents of the session, after Lord Urquhart and before Lord Curriehill. But it seems he has industriously omitted the mentioning of them, lest they, being great ministers of state and favourites, their admission by the lords might have been suspected to have proceeded upon the king's recommendation, as well as mine; and the Lord Durie was never chosen nor admitted constant president, but sometimes vice-president in the absence of Curriehill and Sir Robert Spottiswood, and after the year 1641 was sometimes chosen for a session, as were the Lords Innerpeffer, Foderens, Balcomie, &c.

But suppose it were as clear as the light that the king had neither right to elect, nominate nor present the president of the Session, but had done it in all these cases without warrant, yet no man that hath the least knowledge of law can refuse that the disposition of him that hath no right, with consent of him that hath right, is as valid and sufficient right as if the consenter had been disponee, seeing his consent communicates all right he had when he did consent; and therefore the consent of the lords to the

king's election by their express admission leaves no pretence of quarrel. And though the vote of parliament declaring that the president of session shall be elected by the lords had then passed in an Act of Parliament, it could only revive the Act of Parliament 1579, and could but have effect *ad futura*, and doth not declare anything *ad præterita*, and so could not touch my title, which had both the consent of the lords in anno 1671 and renewed in 1689; as in the case of President Proven, who, being a limited president by the king's nomination, did not, by reason of the subsequent correctory law 1579, either cease to be president or was of new elected, but by virtue of his former admission continued till he died. And now, after all this, I appeal to the conscience of all just and unbiassed persons, if this libeller hath any just pretence that I have betrayed my country by accepting to be president of the Session. I hope those that have charity that men may aim at the service of God and their country more than their own interest, will not conclude that my interest was the chief motive that made me resume so heavy a burden in my present circumstances; and it is known to many of eminent quality that while Sir George Lockhart lived, I would neither desire nor accept of this charge, nor had I any doubt but that the king would have provided me as well as by it. Nor did I ever hear that any number of those who were for a change did propose a person which were fitted and would be commonly acceptable in my place.

EDINBURGH, *printed in the year* 1690.

APPENDIX TO CHAPTER IX.

Unto His Grace, William Duke of Hamilton, their Majestics' High Commissioner, and the Honourable Estates of Parliament,—

The INFORMATION of the VISCOUNT OF STAIR, President of the Session (1693).

My Lord Stair being President of the Session for life, he and other lords of the Session were turned out by granting a new commission *anno* 1681, which was an unprecedented practice in this nation; but since that time the lords of Session were obliged to accept new commissions during pleasure, and some of them turned out of their offices for disposing others to comply.

When the Claim of Right was framed at this happy Revolution, one of the former practices condemned as illegal was the changing of judges' gifts *ad vitam aut culpam* into commissions *ad bene placitum*.

My Lord Stair, being illegally turned out, was reponed to his office of President of the Session by his Majesty's nomination of the lords, and hath his pension secured to him by his Majesty during all the days of his natural life—which letter of pension bears expressly that he was removed from his place of constant President without order of law or pretence of any cause, and that immediately after the parliament 1681, wherein he appeared zealous for the preservation of the Protestant religion.

There are now two Acts framed—to be presented to the parliament—both calculating to annul my Lord Stair's office, and so framed as to look backward, contrary to the nature of all statutory laws.

The one provides that no peer or lord of parliament shall bruik or enjoy the office of an ordinary lord of Session, and that his admission thereto shall be void and null; and that the creating any of the ordinary lords a peer doth and shall *ipso facto* render him incapable. The other Act doth declare that their Majesties may now and hereafter nominate or appoint one or more of the lords of Session to *precede* therein, and that for such time and space and by such courses and turns as they in their royal wisdom shall think fit, any law or custom to the contrary notwithstanding.

(1.) Neither of these Acts are proposed by their Majesties' High Commissioner, and so it is not to be presumed that his Majesty doth desire any further interest or prerogative in the naming or changing of the president of the Session than what his Majesty and his royal predecessors have possessed.

My Lord Stair hath that confidence in and evidence of his Majesty's bounty to him, that he would not in the least grudge to depend upon his Majesty's pleasure, if that had been proposed or desired by the king: But seeing both Acts are framed by a committee, wherein several members are known to own a personal pique and prospect to affront my Lord Stair, he doth desire, in the first place, that the said articles in the Claim of Right be considered, which was framed for the security of property by asserting the right of the judges during life: And albeit this nation be sufficiently secured against all arbitrary courses by the unparallelled justice and equality of his Majesty's disposition, yet this Act is designed as a perpetual law, and in succeeding reigns may be used as a mean to overawe such ambulatory presidents.

(2.) The said Acts are contrary to the institution of the

College of Justice, which does appoint one president, and, in his absence, a vice-president, to be named by the king, and how far the alteration of any part of that constitution will be acceptable to his Majesty is best known to his High Commissioner.

(3.) As to both these Acts, if there were any expediency, yet, my Lord Stair's office being his proper right during life, they ought only to take effect when the office shall be legally vacant, and ought not to run back, seeing all laws do naturally look forward; and it is specially provided that laws shall only look *ad futura*, *Ja. VI., Parl.* 10, *cap.* 19; *Ja. VI., Parl.* 13, *cap.* 186. And if it were not so, no man living could be secure of any right, which can only be given and taken according to the law standing for the time.

(4.) Though the one Act seems to give the king a prerogative of making the lords ambulatory, yet the other is an express straitening of the king's power, that he may not nobilitate such as have been constant and faithful servants to the Crown, which was practised frequently by his Majesty's predecessors ever since the institution of the College of Justice; and it is undeniable that, in the reigns of King James V. and Queen Mary, before the Reformation, the bishops of Orkney, Ross, Dumblain, Galloway, Brechin, the abbots of Cambuskenneth, Dunfermling, Newbottle, and many others who were peers and lords of parliament were presidents and ordinary lords of Session; as also my Lord Fyvie was nobilitate when president, and afterwards was Chancellor Seton and Earl of Dunfermling; and likewise the Lord Balmerinoch, who succeded as president, was nobilitate while he was lord of the Session, and continued in the office of president till 1608. And both the Lord Fyvie, president of the Session, and the Lord Balmerinoch were Commissioners for the Union in the Act of parliament 1604. As also the Lord Drumcairn, one of the lords of Session, was created Lord Binnie, between the years 1612 and 1617, and president of the Session the year 1616, having succeeded to President Prestoun, and continued pre-

sident till the year 1626, and is a signer of the Act of Sederunt anent the Clerks, *anno* 1621, by the designation of the Earl of Melross; as also the Viscount Lauderdale, afterwards Earl, and the Lord Carnegy are both signers of the said Act of Sederunt, and were ordinary lords of the session. Likeas the Lords Holyroodhouse and Napier, while lords of the Session, were created peers; as also the Lords Halkertoun, Nairn, and Viscount of Tarbet were all nobilitate when on the Session, and did continue thereafter in their offices; and whatever inconveniency may be by introducing such as are born peers, and whose education is not presumed to be fit for that charge, yet these who have passed all the degrees, and have become eminent in their employment as lawyers or judges, ought not to be incapacitate from enjoying these titles and dignities which the king may dispose of to any of his lieges he pleases.

And lastly, it would be thought strange that a statute should be made to have effect before it was made, by evacuating a place fully secured by the law, and in prejudice of a person who had served the nation in law from the year 1647 till this time, except when he was extruded without cause, and who hath done more to make the laws and customs of this nation plain to all judicious persons than any man before him ever did. The world would wonder at the ingratitude of the nation, if they should endeavour to stain his reputation who hath left such evidence of his care and faithfulness to them in his writings, that will outlive the malice and piques of his adversaries. What greater evidence of integrity can be shown than that, when he was in exile seven years, never person made the least complaint against him, when it would have been most acceptable to those in power at that time?

Notice of Sir David Dalrymple, Lord Hailes.

Sir David Dalrymple, Lord Hailes, only son of Sir James Dalrymple of Hailes, by Lady Christian Hamilton, daughter of the sixth Earl of Haddington, received his classical education at Eton, and from thence went to Utrecht, where he studied civil law as a preparation for the Scottish bar. He was admitted advocate in 1748. He never attained to much practice or distinction in his profession, although a thoroughly grounded lawyer, and had sufficient leisure to pursue those literary and antiquarian researches in which he most delighted. His knowledge of law, acuteness, application, and character for probity recommended him for elevation to the bench, albeit without extensive practice or the possession of the more captivating qualities of a public speaker, and he became a judge of the Court of Session, as Lord Hailes, in 1766, and, ten years afterwards, a lord of Justiciary. As a judge, he obtained and merited the confidence and approbation of his countrymen.

The literary character and pursuits of Lord Hailes led him to an acquaintance and intercourse with most of the learned and accomplished men of his time. Such were Bishop Warburton, Dr Johnson, Dr Percy, Thomas Warton, Dr Birch, Bishop Hurd, and Horace Walpole. He made occasional visits in vacation time to London; and the notices of him, and of his 'Annals of Scotland,' which occur in Boswell's 'Life of Johnson,' demonstrate the estimation in which he was held, not only by the great moralist but by the social and literary circles of the metropolis generally.

The subjects of Lord Hailes's investigations are referable almost exclusively to two distinct classes—the one connected with the history and literary antiquities of Scotland, and the other with the earlier state of the Christian Church. His three most important works were the following: 1. 'Additional Case of Elizabeth, claiming the Title and Dignity of Countess of Sutherland,' Edinburgh, 1770. This

Paper was prepared for the House of Lords by Lord Hailes, as one of the guardians of Lady Elizabeth, infant daughter of the last Earl of Sutherland, in the disputed case of succession to the Sutherland peerage; the names of two of her ladyship's counsel (Alexander Wedderburn and Adam Fergusson) being prefixed to the volume. Lord Hailes is considered to have displayed in this composition the greatest accuracy of research in regard to the family history of the Scottish nobility and the rules of descent in Scotland, treating the question at issue with such dexterity of argument as not only clearly to establish the right of his pupil, but also to form a precedent for the decision of all such questions of succession in future. 2. The 'Annals of Scotland,' Edinburgh, 1776—a work well known and highly appreciated for its accuracy and exactness of dates. 3. 'An Inquiry into the Secondary Causes which Mr Gibbon has assigned for the rapid progress of Christianity,' Edinburgh, 1786. 4to.

A copious list is given by Mr David Laing (Encyc. Brit., vii. 603) of Lord Hailes's various publications, amounting to nearly fifty. He died in 1792, in the 66th year of his age, having been twice married, and leaving two daughters; from the youngest of whom, married to —— Fergusson of Kilkerran, Mr C. Fergusson Dalrymple, M.P., his representative in the estate of Hailes, is descended.

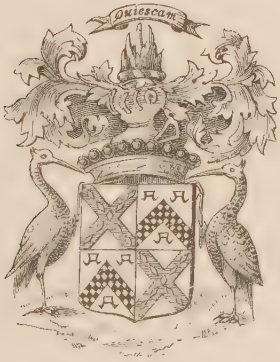
Note as to the Stair Arms,

Communicated by Charles Elphinstone Dalrymple, Esq.

It may be mentioned, with reference to the Arms borne by the Lords Stair, that the first Viscount, and his son and successor the first Earl of Stair, used as supporters two Storks *proper*, assumed probably by the former in grateful recognition of the asylum which he found in Holland (where the stork has long been a favourite bird), when forced to exile himself. His grandson, John, the second Earl, adopted

Lions in their place, probably in consequence of the discovery by Nisbet of the seal of a "Jacobus Dalrumpyl" of date 1402 (engraved in Nisbet's Heraldry), which shewed lions as supporters, and which his successors in the title have continued to use.

The two first Lords bore as their motto the word "Quiescam" placed over their crest, which was a Rock *proper*. It is not known whether this was their hereditary bearing, or a fresh assumption by the Lord President Stair, when raised to the peerage, meant to be typical of the part he seems to have aimed at in his public career, to which it appears not inapplicable. The second Earl, however, exchanged their motto for the word "Firme," which has ever since been used by the various branches of his family.



APPENDIX

FIRST EARL OF STAIR

THE STAIR ANNALS—FIRST EARL OF STAIR.

APPENDIX TO CHAPTER I.

SIR JOHN DALRYMPLE'S "DEFENCE AND PLEA" FOR THE EARL OF ARGYLE, IN REPLY TO THE KING'S ADVOCATE.—(*Howell's State Trials*, viii. 931.)

"SIR JOHN DALRYMPLE replies for the pannel, That since the solid grounds of law adduced in the defences have received no particular answers in relation to the common consent of all casuists, viz., that a party who takes an oath is bound in conscience to clear and propose the terms and sense in which he does understand the oath; nor in relation to the several grounds adduced concerning the legal and rational interpretation of dubious clauses: And since these have received no answers, the grounds are not to be repeated, but the procurators for the pannel do farther insist on these defences:—

It is not alleged that any explanation was given in by the pannel to any person, or any copy spread, before the pannel did take the Test in council, so that it cannot be pretended that the many scruples that have been moved concerning the test did arise from the pannel's explication; but on the contrary, all the objections that are answered and obviated in the pannel's explication were not only privately muttered, or were the thoughts of single or illiterate

persons, but they were the difficulties proposed by synods and presbyteries long before the pannel came from home or was required to take the test ; so that the general terms of the Acts of Parliament founded upon in the libel are not applicable to this case ; for as these laws in relation to Leasing-makers are only relative to atrocious wilful insinuations or misconstructions of his Majesty's person or government, or the open depraving of his laws, so the restrictive clause whereby sedition or misconstructions may be moved, raised or engendered betwixt his Majesty and his lieges, cannot be applied to this case where all these apprehensions and scruples were on foot and agitated long before the pannel's explanation.

As it cannot be pretended that any new dust was raised by the pannel's explanation, so it is positively offered to be proved that there is not one word contained in this explanation but that either these individual words or much worse had been publicly proposed and verbatim read in Council without the least discouragement or the least objection made by any member of the council. And where a writing *ex proposito* read in so high a court was universally agreed upon, without the alteration of a syllable, how can it be pretended that any person thereafter using the said individual terms in any explanation, and for easier terms, shall incur the high and infamous crimes libelled ? And the question is not here whether the council was a proper judicature to have proposed or imposed a sense, or allowed any explanation of the test to be published, but that it is impossible that a sense they allowed on being publicly read before them, and which the king's Advocate did not controul, should import treason or any crime ; and though the pannel's advocate will not pursue or follow the reply that has been made to this point, yet certainly no man of sober sense will think that it is fit to insinuate that so high a judicature might have authorised or acquiesced in such explanations as the lieges thereafter should be entrapped to have used.

If the pannel had officiously or ultroneously offered a

sense or explanation of his Majesty's laws which the laws themselves could not have borne, it might justly have been alleged that he was *extra ordinem* and meddling in a matter he was not concerned in ; but where the act of council did enjoin and he was required and cited to that effect, it could neither be construed as ostentation or to move or encourage scruples or resistance, but it was absolutely necessary either to have refused the test or else to have declared what he thought the true and genuine meaning of it. And there being so many objections publicly moved and known, his explanation was nothing else but to clear, that he did not look upon these scruples and objections moved by others as well founded and rational in themselves ; and therefore he was able to take the test in that sense the council had heard or allowed. And it is not controverted that the sense of the legislator is the genuine sense both of laws and oaths, and if a person were only interpreting the meaning of either a law or an oath imposed he should deprave or misconstrue the law and oath, if he rendered it wittingly and willingly in terms inconsistent with the meaning of the imposer : but there is a great difference betwixt taking of oaths and interpreting oaths ; for when a man comes to take an oath, except his particular sense did agree with the genuine meaning of the imposer, he cannot take that oath, though he may very well interpret and declare what is the sense of the legislator, while he may know and yet perhaps not be able to take the oath.

And therefore when there is any doubtfulness in an oath, and a party is bound to take it, if then he gives in an explication of the sense which he in his private judgment doth apprehend to be the genuine meaning, if that private sense be disconform to the legislator's sense in the oath, then the imposer of the oath or he that has power to offer it to the party, if he consider the party's sense disconform, ought to reject the oath as not fulfilling the intent of the law imposing it.

But it is impossible to state that as a crime, that a party

should neither believe what is proposed in the oath nor be able to take it, and he can run no further hazard but the penalty imposed upon the refuser. And therefore in all oaths there must be a concourse both of the sense imposed by authority and of the private sense, judgment, or conscience of the party. And therefore if a party should take an oath in the sense proposed by authority contrary to his own sense, he were perjured; hereby it is evident that the sense of authority is not sufficient without the acquiescence and consent of the private person. . . .

And as to that part of the [prosecutor's] reply that explains the treason, there can be no treason in the pannel's case, because the express Act of Parliament founded on doth relate only to the constitution of the parliament; and I am sure his Majesty's Advocate cannot subsume in these terms, and therefore in the reply he recurs to the general grounds of law that the usurping of his Majesty's authority in making a part of the law, and to make alterations in general and without the king, are high and treasonable words or designs, and such as the party pleases, and such designs as have been practised in the late times. And that even the adjective of fair and safe words, as in the Covenant, does not secure from treasonable designs, and that it was so found in Balmerino's case, though it bear a fair narrative of an humble supplication.

It is replied, that the usurpation of making of laws is undoubtedly treasonable, but no such thing can be pretended or subsumed in this case; for albeit the pannel declares his explanation to be a part of his oath, yet he never meant to impose it as a part of the law, or that this explanation should be a thing distinct, or a separate part even of his oath, for his explanation being exegetic of the several parts of the oath, it is no distinct thing from the oath, but declared to be a part of the oath *de natura rei*. And it was never pretended that he that alleged anything to be *de natura rei* did say that that was distinct and separate, which were a contradiction. And therefore the argument

is retorted, the pannel having declared this explanation was, *de natura rei*, implied in the oath, he necessarily made this explanation no addition or extension of the oath. So that, for all this explanation, the oath is neither broader nor longer than it was.

And as to these words: 'I do not mean to bind up myself in my station and in a lawful way to wish and endeavour any alteration I think to the advantage of Church or State not repugnant to the Protestant religion and my loyalty;' it is a strange thing how this clause can be drawn in question as treasonable, when it may with better reason be alleged that there is no good subject but is bound to say it. And albeit the words, 'to endeavour in my station,' be words contained in the Covenant, yet that is no reason why two words in the Covenant may not be made use of in another very good and loyal sense. And there is no man that shall have the honour either to be intrusted by his Majesty in his council or any other judicature, or to be a member of parliament, but he is bound by his loyalty to say the same thing. And there was never a clause more cautiously expressed, for the words run—'to endeavour any alteration I shall think to the advantage of Church and State.' And though that was sufficient, yet the clause is so cautiously conceived that it contains another restriction—'not repugnant to religion and his loyalty.' So that except it could be alleged that a man by lawful means, to the advantage of Church and State, consistent with his religion and loyalty, could make treasonable alterations and invasions upon the Government and monarchy, which are the highest contradictions imaginable, there can be nothing against the pannel. And albeit the clause 'any alterations' might, without the qualifications and restrictions foresaid be generally extended, yet the preceding words 'lawful way,' and the rational interpretation of the emission of words, especially before a solemn judicatory, leaves no place or shadow to doubt that these alterations were no fundamental or treasonable alterations, but such as the

frailty of human affairs and constitutions and vicissitudes of things and circumstances so constantly require in the most exact constitutions under heaven. And the clause does not so much as import that there is a present necessity of alteration, but it was a necessary and rational prospect that albeit at present all things under heaven had been done to secure the religion and government, yet there might occur cases that would require new helps, alterations, and remedies. And it is not pretended in this case for the pannel that he desires to alleviate or take off words truly treasonable or having an ill design by the mixing of fair and safe, dutiful and submissive expressions, which indeed are protestations *contrario facto*. For there is nothing in his explanation, that either in his design, or in the words themselves, being rationally and naturally interpreted, can infer the crimes libelled or any of them. And the pannel's known principles and known practices do not only clear that loyalty that he has propped before the Lords of Justiciary, and instructed by unquestionable documents, but they put him far from the suspicion of these damnable principles related in the reply of which the whole tract of his life hath been an entire evidence of his abhorrence and detestation.

In the last place, it is thought strange why that should be represented as an affront or disgrace to the Government, that the parliament imposes a Test which the pannel is not able to take simply. And it is not pretended that he hath deponed, written, or spoken against the test itself, or for the inconvenience of it, but only that he hath not been able to see the good ground upon which it may be simply taken. And this were to condemn him for want of sight or sense when the law hath punished no man for not taking the test, but only turned him out of the Government. And it is as strange an inference that because the pannel declares he believes the parliament meant no contradiction, and would take the test in as far as it is consistent, that therefore he said the parliament imposed contradictions; which is so far from a rational induction that the contradiction of these subsump-

tions, in all congruity of language and sense, is necessarily true. And therefore the last part of that clause, 'in so far as it is consistent,' is a consequence inferred upon the former,—viz., I believe the parliament designed to impose no contradictions; *ergo*, I take the test as consistent, and in so far as it must be consistent if the parliament did not impose contradictions, as certainly they have not; and to convince the world that in this sense this explanation is receivable, it was proposed in council and allowed, and therefore, without the highest reflection, it cannot now be quarrelled."

APPENDIX TO CHAPTER VII.

The Master of Stair to the Earl of Lothian.

(*Extract.*)

LONDON, *Dec.* 22, 1692.

I HEARTILY wish your lordship joy of your new alliance. It is not to be debated, the family of Douglas is as honourable as any below princes in Christendom. . . .*

The Same to the Same.

LONDON, *Dec.* 22, 1692.

I can give your lordship no good account why Sir Patrick Murray was so hardly used. I protest it was done before I heard of it. . . . Everybody will miss him that has concern in the public money, but I am sure the king will miss him most of us all. He was not only early in his interest, but since he was a man he hath been of those same principles this Government stands on, so will change his nature before he change his side.† I thought as many several sorts of persons would have concurred to preserve Sir Patrick as any

* Lady Mary Kerr, daughter of the Earl of Lothian, was married in December 1692 to the Marquis of Douglas; the issue of this marriage being a son, afterwards Duke of Douglas, and a daughter, Lady Jane, the heroine of the famous "Douglas Cause."

† Sir Patrick Murray succeeded Sir John Dalrymple as member for Stranraer in 1689 in the Scottish parliament.

one man in the kingdom. I asked the king whether his Majesty had seen any thing with his own eyes that did convince him that Sir Patrick was unfaithful, or if information was from second hands. His Majesty said he had not himself seen it, therefore I dare be bold to say it is an imposture. Time will try that, and many things else. One thing I do persuade myself of, that no ill usage will make Sir Patrick change tried bands. . . . My dear Lord, adieu.*

* From the Lothian MSS.

APPENDIX TO CHAPTER IX.

The Lord Treasurer Godolphin to the Lord Chancellor of Scotland (Earl of Seafield).

WINDSOR, *July* 17, 1703.*

MY LORD,—I had the favour of your lordship's of the 10th before I left London, but had not time to answer it by the packet Mr Nairn despatched from thence on the 15th at night.

I beg leave to represent to your lordship that as to the Act for putting the power of peace and war into the parliament, which has always been one of the chiefest flowers of the Crown, and in this case perhaps a very necessary one for the good of the subject, though the queen was unwilling to refuse my lord Commissioner [Duke of Queensberry] such an Instruction as he desired,—to consent to it in case of necessity, yet her Majesty could not but be sensible at the same time that the consenting to such an Act might prove extreamly inconvenient both to England and Scotland; and therefore, though she finds her other servants in that kingdom do generally concur in the desire of such an instruction to be made to her commissioner, to be made use of in case of necessity, yet she hopes and expects from them all that they will also concur in endeavouring to prevent that necessity as far as it is possible.

Pray, my lord, allow me, for argument's sake, to suppose

* From an autograph copy by Lord Godolphin among the papers of the Duke of Leeds.

the case were now happened. England is now in war with France; if Scotland were in peace, and consequently at liberty to trade with France, would not that immediately necessitate a war betwixt England and Scotland also, as has been often the case before the two nations were under the same sovereign? And though perhaps some turbulent spirits in Scotland may be desiring to have it so again, if they please to consult history they will not find the advantage of those breaches has often been on the side of Scotland; and if they will give themselves leave to consider how much England is increased in wealth and power since those times, perhaps the present conjuncture will not appear more favourable for them, but on the contrary rather furnish arguments for enforcing the necessity of a speedy union between the two nations: which is a notion that I am sorry to find has so little prevalency in the present parliament of Scotland, and I hope your lordship will not be offended with me if I take the freedom to be of opinion they may possibly be sorry for it too, when the opportunity is out of their reach.

I had not time to write so fully upon this subject by the last packet to my lord Commissioner, and therefore would desire the favour, if you please, that you would communicate this letter to him, and excuse the great freedom of it from, my Lord,

Your lordship's most humble and obedient servant,

GODOLPHIN.

LORD CHANCELLOR.

APPENDIX

SECOND EARL OF STAIR

THE STAIR ANNALS—SECOND EARL OF STAIR.

APPENDIX TO CHAPTER IV.

Joseph Addison, Esq., to the Earl of Stair.

April 25, 1715.

My Lord, — The gentleman who bears this letter being ambitious of paying his respects to your lordship, I humbly presume to recommend him to the honour of your lordship's protection during his stay at Paris. Were my Lord Sunderland in town, I might have done this good office for my friend in his lordship's name, who is well acquainted with his character and merit. His name is Mr Shakbourgh, a Warwickshire gentleman of an ancient family, considerable estate, honest principles, and great interest in his county, all which will, I hope, excuse me with your lordship for the liberty I take on this occasion. His business at Paris is to settle his son in an academy. I should think myself very happy were I honoured with any of your lordship's commands in England.

Prince Eugene to the Earl of Stair.

Vienna, *Avril* 18, 1715.

Par le retour de votre courier j'ai eu l'honneur de vous mander qu'outre le plein pouvoir que sa Majesté Imperiale

vous envoioit, il suivroit au premier jour un homme sûr chargé de l'instruction nécessaire pour finir cette affaire [de Majorca]. On n'a pas perdu un moment de temps; vous la trouverez jointe à cette lettre qui vous sera rendue par M. Joannes Amor di Soria, secrétaire de sa Majesté Impériale, auquel vous pouvez avoir toute confiance sur ce qu'il vous dira de la part de sa Majesté Impériale, laquelle, connoissant votre capacité et la part que vous avez toujours pris à ses intérêts, espère que vous en donnerez des marques dans cette occasion, l'Angleterre même étant intéressé à procurer le repos à ce peuple.

EUGENE DE SAVOYE.

The Same to the Same.

(*Extract.*)

VIENNA, 19 *Juillet*, 1715.

. . . Vous pouvez juger de ma surprise que sans attendre l'issue de la négociation l'on [les Espagnols] a commencé à embarquer les troupes pour l'expédition de Majorque, dont nous savons par l'Italie la debarquement.

The Same to the Same.

(*Extract.*)

VIENNA, 17 *Août*, 1715.

. . . Sa Majesté Impériale est entièrement satisfait de la conduite et du zèle que vous avez fait paroitre dans la négociation de Majorque, non-obstant que l'issue n'en a pas été telle qu'on croyoit, ayant toujours cru qu'elle se termineroit au contentement des deux parties.

Col. J. L. Ligonier to the Earl of Stair.

PORT MAHON, *June* 20, 1715.

Some time ago I had the honour to inform your Excellency that the Spanish fleet was in sight of this island; a few

days after they landed at Majorca, and have met since with all the good success they could desire. By the ill defence of the governor of Alcudia, they are masters of all except the capital, Palma, where the Viceroy [Marquis de Ruby] is with 2500 regular troops; and as the town is strong, and they attack him but with 7000 men, I believe the siege will be long. The Marquis de Ruby has desired I would enclose this letter to your Excellency, in whose hands he is assured from Vienna the affair of Majorca is entirely left. The Spaniards had given out that they thought no more of this expedition, which has been carried on with all the diligence imaginable, so that though all their ships were dismissed, they were gathered together (at least most of 'em) and under sail in three or four days.

The Earl of Stair to Mr Secretary Stanhope.

PARIS, *Juillet* 21, 1715.

. . . Aussitôt que cela se pourroit ménager, je verrai ——* et je vous rendrai une bonne réponse des commissions que vous me donnez pour lui. Il m'a fait dire qu'il est très persuadé qu'on ne se mêlera point de tout des affaires du Prétendant. La bonne assurance que nous en avons est l'état de leurs affaires qui ne le permet pas, car pour la bonne volonté elle y est tout entière. M. le Marquis de —— hier a dit qu'ils avoient tort d'aigrir la Grande Bretagne au point qu'ils le faisoient, qu'ils etoient mal informés de la situation de nos affaires, que le roi surmonteroit bientôt les difficultés qu'il trouvoit chez lui, et qu'alors il faudroit ramper devant lui. Ce royaume ici tombe en ruine; la capitation et le dixième qu'on vient d'imposer sans terme achèvent de la perdre et le peuple est avili par la servitude à un point qu'on ne sçauroit concevoir. Je dois vous dire qu'il y a un certain Russi-Francois qui est dernièrement passé en Angleterre. Il en sortit autrefois à l'occasion de la conjuration qu'il y eut contre le roi Guillaume, dans

* Probably the Duke of Orleans.

laquelle on m'a dit qu'il a été mêlé. Il a deux coups de sabre au front et boite d'une jambe ; on dit que c'est un très méchant homme. De ceux qui fournissent d'intelligence en ce pays ici, il y a un certain Captain Cole et un Suedois qui s'appelle Mandel.*

The Earl of Stair to the Regent Orleans.

[*Octobre*] 1715.

MONSEIGNEUR,—La nouvelle ici est que le Prétendant part ou est parti de Bar aujourd'hui pour envahir le royaume de la Grande Bretagne, et qu'il y a plusieurs officiers Irlandois qui doivent l'accompagner dans cette expédition ; et que les dits officiers ont rendezvous à Dieppe et à Boulogne, d'où ils doivent être transportés en Angleterre. Comme je suis très persuadé que votre Altesse Royale ne donnera nulle aide ou assistance au Prétendant ni ne permettra qu'il lui en soit donné de la part de la France, j'espère que votre A. R. trouvera à propos de donner ordre qu'aucun officier ni soldat des troupes à la solde de France ne suive le Prétendant dans cette expédition contre la G. B. sous peine de cassation, et que cet ordre soit publié au plutôt principalement dans les places frontières voisines à la G. B. où se trouvent les troupes Irlandoises. Et si au même temps votre A. R. vouloit bien ordonner le long de la côte de Havre jusqu'à Graveline, qu'on ne transporteroit pas durant quinze jours de tels officiers passants en Angleterre sans qu'ils aient des passeports donnés par order de V. A. R. ou par le Ministre de la G. B., le Roi, mon maître, en auroit une très grande obligation à V. A. R.

* Stair Papers, vol. iii., B.

APPENDIX TO CHAPTER VII.

The Chevalier de St George to the Republic of Venice.

TRÈS CHERS GRANDS AMIS, ALLIÉS, ET CONFEDERÉS, —Ayant plû à Dieu de toucher les cœurs d'un grand nombre de nos sujets et de leur inspirer de nous rappeller à nos royaumes injustement usurpés, nous avons résolu de profiter d'une disposition si favorable à notre rétablissement et d'aller incessamment nous mettre à leur tête pour tacher de faire valoir notre droit incontestable au Trône de nos ancestres. Nous sommes bien aise de vous marquer en cette occasion notre estime et notre amitié en vous faisant part de cette resolution que nous avons prise, et de vous assurer en même temps que dans cette expédition où le devoir et l'honneur nous engagent, notre intention n'est pas de troubler la paix de l'Europe, mais de la rendre solide et permanente par les liens d'une amitié sincère et d'une étroite alliance que nous serons toujours disposés à contracter avec tous les Princes et Souverains Chrêtiens et particulièrement avec vous. Ainsi nous nous flattons que vous observerez une neutralité exacte, que nous avons lieu d'attendre de votre amour pour l'equité. . . .

Votre Bon Ami, Allié, et Confederé,

JACQUES R.

Ecrit à BAR LE DUC, *le* 18 *Octobre l'an* 1715.

(*Enclosing the above Letter.*)

MONSIEUR,—Le Roi d'Angleterre, mon maitre, qui est allé pour prendre possession de ses Royaumes, m'a ordonné

de vous envoyer la lettre ci-jointe qu'il écrit à la sérénissime République de Venise. Vous aurez la bonté, s'il vous plait, de lui faire tenir, et de me croire,

Monsieur,

Votre très humble et très obéissant serviteur,

HIGGONS.

A ST GERMAIN EN LAYE, *ce* 19 *Decembre* 1715.

Pour M. MARTINE, Résidenz de la République de Venice.

The King (George I.) to the Duke of Lorraine.

ST JAMES'S, *Feb.* 22, 1716.

MON FRÈRE,—D'autant qu'il a plû à la Divine Providence de bénir en telle sorte mes conseils et mes armes, que celui qui a prétendu d'envahir mes royaumes et tous ses adherents sont dissipés, leur dessein pernicieux renversé et lui même s'est enfui ; et d'autant que mes peuples, animés d'une véritable ardeur pour la tranquillité publique, m'ont presentés des Addresses très pressantes pour agir auprès des Princes et des Etats, mes alliés et bons amis, pour que le Prétendant à ma couronne ni ses partisans ne soient plus reçus ni entretenus dans leurs états, la confiance que j'ai toujours eue en votre amitié, et la bonne intelligence qui a toujours subsisté entre la couronne de la Grand Bretagne et votre illustre maison me font espèrer de vous trouver tout à fait disposé à m'accorder la demande juste et raisonnable que je vous fais de ne permettre point que le Prétendant à mes royaumes retourne dans vos Etats, ni que lui ou ses adherents y puissent plus trouver de retraite. Et comme vous ne souriez me donner une preuve plus convaincant de votre amitié et de la part que vous prenez en ce qui me regarde, vous pouvez aussi être persuadé que cela m'engagera à embrasser toutes les occasions de vous donner des marques de mon zèle pour vos intérêts et ceux de votre maison.

ACCOUNT of the EXTRAORDINARY EXPENSES of JOHN EARL OF STAIR, His Majesty's Ambassador Extraordinary to the most Christian King, from 19th June to 19th September 1716 o.s.

	£	s.	d.
Postage of letters as well from England as foreign parts, ...	207	5	0
Paper, pens, and ink, and other stationery wares, ...	94	15	0
For newspapers and intelligence, . .	49	12	0
Given in gratuities to the king's messengers and others, his Majesty's subjects, passing this way, ...	50	0	0
For correspondence and intelligence from the several towns and ports of France concerning the Pretender, the rebels, and their adherents in these parts, . . .	65	0	0
July 3.—Paid for Alexander M'Donald at Lyons for his Majesty's service, 500 livres, *inde*	33	6	8
Aug. 15.—Paid for said M'Donald's relief and subsistence at Lyons and Geneva, after his misfortune at Avignon, 1000 livres, *inde*	66	13	4
Sept. —Paid him for his subsistence at Paris three weeks before I sent him to England, 12 Louis d'or,* 240 livres, . . .	16	0	0
For an express sent to England, 12 Louis d'or	16	0	0
For secret services, 950 Louis d'or, . .	1266	13	4
Deductions made at the several offices in the Treasury and Exchequer on the sums in my last bill of extraordinary expenses actually laid out by me for his Majesty's service,	81	16	6
	£1947	1	10

At PARIS, *this 3d day of October* 1716. (Signed) STAIR.

HAMPTON COURT, 28*th September* 1716.

I allow this bill by his Royal Highness's special command, excepting the last article, amounting to £81, 16s. 6d.
(Signed) P. METHUEN.†

* With reference to the difficult question, "What is a pound?" it will be remarked that the value at Paris of the Louis d'or was at this date one-fourth more than the English pound sterling.

† Stair Papers, vol. viii. The king was at this date in Hanover, the Prince of Wales being in the nomination of Regency. Mr Methuen was Secretary of the Treasury.

APPENDIX TO CHAPTER VIII.

Despatch, Mr Secretary Stanhope to the Earl of Stair.

March 19, 1716.

. . . His Majesty having particularly considered the answer of that [the French] court, has thought fit to direct your Excellency to prepare a new memorial, in which you will set forth, that as the Regent's using his authority to hinder the Pretender from finding at any time or on any pretext a retreat in France, is very satisfactory to his Majesty, as it is agreeable to the treaties between the two crowns, so his Majesty does think it indispensably necessary for cultivating that good understanding which both nations seem so much to desire, that these traitors who have had such a part in the late rebellion, and have been the chief authors of those mischiefs which it has occasioned, should not be allowed to stay in France: that his Majesty has learnt with pleasure from the Duke of Lorraine that the Pretender has left his territories and changed his resolution of fixing in that country; and as there is nothing more just and reasonable than for his Majesty to expect that the Pretender shall not find a retreat with any prince or state in amity with him, neither is there anything more common than for one prince in amity with another to pass their offices in favour of a neighbouring state and ally, especially when the tranquillity and safety of such state may in so great a measure depend upon the success of such offices; and therefore from the friendship which the Regent professes, his Majesty does promise to himself that his

Royal Highness will not decline giving this necessary proof of his sincere intentions to promote the peace of Europe, and of his being entirely disposed to live in a good understanding with his Majesty, but that he will freely pass his offices either with the Duke of Lorraine or any other prince or state in amity with the king, whose admitting the Pretender to their territories may make such offices from his Highness necessary and of consequence to his Majesty's service: that his Majesty cannot apprehend that the passing of such offices can in the least, to use their own expression, *donner atteinte* to the sovereign authority of the State so applied to, who is still at liberty to refuse them or comply with them; but when refused, all the world must allow that his Majesty will be justly entitled to demand satisfaction and to endeavour to procure it by all possible means: that it is in the view of preserving the public tranquillity and of avoiding all occasions that may oblige his Majesty to come to extremities against any neighbouring prince or state that shall harbour the Pretender, that his Majesty asks the good offices of France, which is not unconcerned that its neighbours should continue in peace. You will express his Majesty's satisfaction with what is promised in the answer in relation to the French officers, on the performing of which his Majesty does entirely depend.

These are, my lord, the heads his Majesty judges the proper subject of a new memorial which your Excellency will present without loss of time, enforcing them with such arguments as may occur to yourself, and which may be most suitable to his Majesty's intentions of having these matters represented in the strongest manner. What I have further to say at this time is only to acquaint your Excellency that there being come here advices of the Duke of Leeds designing to return (being as it seems under some straights and pinches) it would be good service if your Excellency could procure some proofs or affidavits of his behaviour whilst he has been in France, which probably has

been such as, if public, would make him lay aside his thoughts of visiting us, which would be no small service by delivering us from so troublesome a guest. . . . Your lordship is at liberty to promise in the king's name that the king will never harbour any persons in his dominions who shall be declared rebels to the crown of France. . . .

The Same to the Same.

WHITEHALL, *March* 8, 1716.

I have received your lordship's letters of the 25th and 28th inst., which have been laid before the king, who will be very glad if the good words given to your lordship by the regent are attended with suitable deeds, and that you get a satisfactory answer to the memorial which we presume you have presented in pursuance of the directions sent you in my letter of the 19th. Your lordship is not ignorant that France is stirring heaven and earth to prevent the Dutch from joining with the king in a defensive alliance with the emperor. M. d'Iberville, who has not thought fit to say one word himself to any of the king's ministers, has received orders to authorise M. Duyvenvorde, the Dutch ambassador here, to offer a defensive alliance betwixt France, the King, and the States. M. Duyvenvorde, who your lordship knows to be naturally pretty sanguine, is very fond of being employed in this negotiation. M. de Monteleon, the Spanish ambassador, hath likewise been commissioned to make the same proposition to me. My answer to him has been very plain and short, that France having during the whole course of our rebellion here expressed by their whole conduct so much ill-will to the king, it seemed very necessary they should give us some real proofs of a friendly disposition before the king could think of entering into new engagements, especially since the regent well knew that his Majesty had, both before the King of France's death and at the beginning of the regency,

given all the demonstrations possible of a sincere desire to live in strict friendship with the regent. What returns his Majesty has met with I submitted to the Marquis of Monteleon, who did, at least in words, agree with me in general that it was necessary France should give public demonstration of their resolution no way to support or countenance the Pretender. With M. Duyvenvorde it has been necessary to speak more in detail, lest an ill use should be made in Holland of the suggestions which the French emissaries will not fail to insinuate, as if England upon no terms would live peaceably with France. After a long deduction, therefore, of all the facts which demonstrably prove the regent's ill intentions towards us during the course of this rebellion, M. Duyvenvorde has been told that his Majesty nevertheless is not only willing, but even desirous, to settle such a good correspondence between France, England, and the States, as may contribute to the peace of all Europe; that he was very well pleased these overtures had been made to M. Duyvenvorde, whose penetration would easily make him discover in the course of this negotiation whether France was on a sudden become sincerely a friend to the Protestant succession, or whether, by specious artifices, she meant to lull both the Dutch and us into such an opinion of security as should make us neglect and slight our old friendships and alliances. It has been, therefore, laid down to him as a fundamental maxim in the king's opinion that no scheme of an alliance with France or for a neutrality of the Netherlands, should divert England and Holland from concluding a defensive alliance and a mutual guarantee with the emperor; that afterwards, if France shall confirm by their behaviour a sincere intention to live well with the king, his Majesty would most readily join in concert with the States to make an alliance for that purpose; that considering the rebellion which had so lately been carried on and fomented by France, and which is not yet quite extinguished, his Majesty did judge it absolutely necessary for the peace of his kingdom that the Pretender should be sent

beyond the Alps; that the chief rebels should not be suffered to stay in France; that since the foundation upon which France has expressed a desire to treat with England and Holland, is to secure the peace of Europe by enforcing the execution and the observation of the Treaty of Utrecht, his Majesty judges it absolutely necessary that France should perform on her part such articles of the said treaty in which not only England, but Holland, are essentially concerned; such an article is that touching Dunkirk, touching which no satisfaction has ever yet been given. M. Duyvenvorde remained fully convinced that it is absolutely necessary France would declare her intentions explicitly on these three heads to the king's satisfaction. Having thus acquainted you with what has passed here, I am commanded to signify to your lordship his Majesty's pleasure that you speak the same language there whenever occasion shall be given by the regent or any of the French ministers applying to your lordship; for since M. d'Iberville has not thought fit to utter one syllable on this subject to any of the king's servants here, his Majesty does not think fit that you should begin to discourse with them. Your lordship having in two of your late letters mentioned it as a thing likely that the Duke d'Aumont should be destined to this court, his Majesty commands you to use all the address you are master of to divert this resolution; and if you should find it absolutely necessary, you are authorised even to express to the regent himself that it will appear a very odd symptom of his disclaiming the Pretender's interest, if he shall send hither as ambassador a man so notoriously known to have abetted, espoused, and promoted that interest. . . . We cannot tell what judgment to make here of late* Lord Bolingbroke's situation, but one has heard that the Jacobites have been a good deal alarmed at the reports of his disgrace, and expressed a good deal of apprehension lest he should return hither and tell all. Your lordship is

* In the original, "my" is scored before the word Lord, and "late" inserted having reference to the Act of Attainder passed against Lord Bolingbroke.

best able to judge what temper of mind he may be in, and if he be in the disposition that some imagine, your lordship cannot do better service to the king than by finding ways to improve it. The king depends so much upon your address in this business that he authorises you to give all suitable hope and encouragement, if you shall see occasion.

The Same to the Same.

WHITEHALL, *April* 16, 1716.

I shall begin this despatch, which is forwarded to your Excellency by a messenger, by telling you that though his Majesty is entirely well disposed to gratify you in any reasonable request, yet his Majesty does not think it for his service that you should leave that court even for the smallest time, as you have desired in your last letters, his Majesty being apprehensive that this may give that court a handle to complain, as if his Majesty was not so forward to adjust matters with them as he pretends, and that your absence was a delay thrown on purpose in the way; so your Excellency must have a little patience and wait for a better opportunity. His Majesty observes with very great satisfaction the advances made by that court towards a negotiation, in which if they are as sincere as they profess, his Majesty cannot but think they will readily agree to such just demands as you have made, and which are so absolutely necessary to pave the way to a good understanding between the two courts, and to convince his Majesty that the regent is sincere in his desire of it; and therefore, in place of all other instructions which your Excellency desires, I am, by his Majesty's orders, to tell you that you are to insist that, *previously to any negotiation*, his Majesty have full satisfaction in the three points you have already mentioned—viz., (1) the article of Dunkirk, (2) the sending the Pretender into Italy, and (3) refusing to allow his Majesty's traitorous and rebellious subjects to stay in France. . . .

(*P.S.—Autograph.*)

The new commission given to the Duke of Berwick in a province so near to Avignon and so commodious for an embarkation, must certainly administer new jealousy to the king and fresh hopes to the Jacobites. It is therefore more necessary than ever to insist in the strongest manner upon the Pretender removing beyond the Alps. His Majesty hath peremptorily declared to the States-General that without that previous step be made, he cannot nor ever will hearken to any overtures of a negotiation with France. If the French are sincere in what they propose, it is incumbent upon them who sent the Pretender to Avignon to find the means of removing him from thence, and 'tis of consequence to his Majesty that his royal Highness should put his Majesty out of suspense in this matter as soon as possible, since his behaviour as to this particular must be the rule by which his Majesty is to govern himself. We hear Prince Vaudemont is lately come to Paris, and I doubt not but that your lordship with your usual sagacity will observe his business, which may very probably be to negotiate for the Pretender. . . .

Letters, Colonel the Hon. Charles Cathcart to the Earl of Stair.

LONDON, *August* 1, 1716.

I have been at Hampton Court in waiting this last week, and had not the convenience for writing to your lordship these two last posts. I shall be so much in the country after this that I cannot promise your lordship so frequent a correspondence as when I was settled in town. But I shall omit no occasion of acquainting your lordship with everything extraordinary that shall happen. The prince [of Wales] continues his ways for gaining the affections of the people.* Their royal Highnesses dine every day in

* The king was at this time in Hanover.

public; the commonality is admitted to see them, and their royal Highnesses look on them so graciously that it has a wonderful good effect in removing the bad impressions our Jacobites and wicked clergy have given the people of the royal family. The prince is most assiduous in business; he makes everything pass through the proper channels. I heard him say the rule of his government should be the glory of the king and the good of the people; yet for all this I am grieved to hear the Ministry is so far dissatisfied that they have wrote in the pressingest manner to the king to return. The reason I heard given for their discontent was about the supplying of some vacancy in the Church. . . . When the prince is angry with anybody, it appears immediately in his way of receiving them; he cannot disguise it. Earl Sunderland is sometimes in private with him; I am sorry to perceive he receives that honest man coolly. . . . The king has left no allowance for a *Green cloth* at Hampton Court; his servants have taken up so much of the house for themselves that the prince is very much put to it for his. Grubb and Bugg, and the rest of these great officers, who ought to live at court and keep tables for the entertainment of people that come there, especially now their master allows no *green cloth*, are all gone down to their country seats. The prince does not seem to take the least notice of all this, but shows the greatest deference in the world to everything his Majesty has done. The Duke of Marlborough recovers wonderfully at the Bath; he rides out every day. This, I hope, will disappoint Mr Stanhope for some time. I heard from good hands, he has in his head much to be at the head of the army. . . .

HAMPTON COURT, *September* 21, 1716.

We are in great joy here at present from the good news we had yesterday morning in the letters from France of the raising of the siege of Corfu, and for what I think is of the greatest consequence to this nation, the demolition of Mar-

dyke, which was settled yesterday. Your friend M. d'Iberville had a long audience. My master [the Prince of Wales] made him a very good countenance. I give your lordship joy with all my heart of the success of your good endeavours. I think we may now look for a little quiet and some leisure to look after the payment of our debts. We want nothing now towards making us happy but a few more people of your way of thinking, that would disinterestedly set about healing the differences amongst the king's friends. For all that's said of matters being made up there, it has not to me the air of continuance. Of all the general officers that were sent down some time ago to review the troops, Lord Cobham and Evans only have been here to make their report. The others contented themselves with making theirs at the Bath. Poor Saltoun is dead, and I do not know if he died in peace with your lordship. He was pleased with your civility in bringing him his pass. But when he considered it and found himself designed "Seigneur Anglois," it brought the Union into his remembrance and all those who had a hand in the making of it. He complained to several of his friends of that appellation as a very great affront to him.*

LONDON, *November* 5, 1716.

I have delayed writing of this so long that I have but just time not to lose the post. I was in hopes of being able to give you the joyful news of the arrival of a young prince. Her royal Highness was taken ill with her pains at six o'clock last night. The anniversary of K. William's birthday made us wish with impatience to see the royal family strengthened upon that happy day. . . . It was complained of this morning that she listened more to her German midwife's advice than to Sir David Hamilton's. She is not thought to be in any danger, but the prince's good heart shows itself in a prodigious concern for her.

* Lord Saltoun's feeling of indignation at being designed "Seigneur Anglois" is given expression to in a short poem in Hogg's Jacobite Relics, ii. 432.

The archbishop and the chancellor have been at court for the most part since the princess was taken ill, and the prince has slept none at all scarce. I have this minute received your lordship's of the 7th, and offer you my hearty thanks for recommending me to Mr Methuen. There are few of our great folks I should wish to be so well with as with him, and that's more for his merits' sake than his interest as yet.

Letter—George, Prince of Wales, to the Regent Orleans.

St James's, *December* 22, 1716.

Mon Frère,—Je suis fort sensible de la lettre obligeante que vous venez de m'écrire, et de la part que vous prenez en tout ce qui regarde la prosperité et l'aggrandissement de notre maison. Je suis entièrement persuadé que les liens de la nouvelle amitié commencée entre l'Angleterre et la France deviendront de jour en jour plus forts, et vous pouvez être assuré que je ne manquerai aucune occasion pour vous marquer avec combien de sincerité je suis, &c.

George P.

Letter—Col. the Hon. Charles Cathcart to the Earl of Stair.

Cathcart, *January* 22, 1717.

It is with no small satisfaction I can now acquaint you, my dear lord, that James Campbell* and I have adjusted matters in that friendly manner was to be expected from us, and the deference both of us justly owe to your lordship's decision. I am to give him the £4000 he gave General Stewart for his regiment of foot, and he is gone up to manage the purchase of the Greys with Lord Portmore.

* The Hon. Sir James Campbell, of Lawers, third son of the second Earl of Loudoun, and brother-in-law of Lord Stair, obtained the colonelcy of the Royal Scots Greys in February 1717, by purchase from Lord Portmore. Of the same date Lieut.-Col. Cathcart obtained the colonelcy of the 9th regiment of foot, having been previously lieut.-colonel of the Greys.—Douglas's Peerage, by Wood. Sir James Campbell retained the command of the Scots Greys till his death at the battle of Fontenoy.

Col. Campbell * has undertaken to make interest with Lord Cadogan for me, that I may have leave to dispose of my own post to the best advantage. If that's granted, I shall have the regiment of foot for nothing; the one will answer the other. But I am much afraid of opposition from the Duke of Roxburgh in that matter; Col. Campbell having sold his commission to me in the regiment for £3500, his Grace will naturally ask the same favour for his cousin Sir Robert Hay. Your lordship knows the knight's manner of serving. I reckon you'll be of opinion he should pay well for his preferment. James Campbell's transaction and mine being a secret between ourselves, he is to insist upon my having allowance to sell to the best advantage, to enable me to give so great a price for the regiment of foot. And what I have still further to advance in my favours is the Duke of Marlborough's promise to the prince that I should have the first regiment. This was made upon Lord Forester's being preferred to Wills's regiment. I would fain hope that this promise should at least procure me some help from the Government towards my purchase, and I must beg your lordship's good offices in this matter with my Lord Cadogan, and his Grace of Roxburgh (Secretary for Scotland); if he insists for his friend, to make everything easy, I hope he'll come in to the other proposal for me. I should be very glad this affair could be managed for me without my going up. Many reasons engage me to desire to make some stay here at this time. If your lordship comes over, I reckon all difficulties will be removed, and your lordship's advice shall determine me as to my journey up.

I have laid the proposals I gave your lordship an account of in my last before my parliament here.† They would be

* This was probably Colonel John Campbell, cousin of the Duke of Argyle, who was Groom of the Chamber to the Prince of Wales; Cathcart being also in the prince's Household.—Lord Hervey's Memoirs, vol. i.

† The proposals here spoken of refer to Colonel Cathcart's intended marriage to the only daughter and heiress of Sir John Shaw, of Greenock, which took place in the following year.

very glad of a federal union; they are by no means to be brought into an incorporating one, where their name is to be sunk. I hope your lordship will be of my mind that it is not fit for me to make that step without their consent. Lord and Lady Cathcart are most thankful for the kind assurances you are pleased to give them of taking care of their grandson [Whiteford] when it is in your power. He is a very pretty young fellow, and has a very right turn to our trade. If your lordship had a vacancy, he would make a good cornet. They offer your lordship their most humble services. . . .

END OF FIRST VOLUME.

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